



**FULTON-MONTGOMERY COMMUNITY COLLEGE**

[www.fmcc.edu](http://www.fmcc.edu)

Johnstown, New York

**TITLE IX POLICY PROHIBITING SEX DISCRIMINATION**

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

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## **A. Notice of Nondiscrimination**

Fulton-Montgomery Community College (“FMCC” or the “College”) does not discriminate on the basis of sex and prohibits sex discrimination in any Education Program or Activity that it operates, as required by Title IX, including admission and employment.

Inquiries about Title IX may be referred to FMCC’s Title IX Coordinator, the U.S. Department of Education’s Office for Civil Rights, or both. FMCC’s Title IX Coordinator is Arlene Spencer, Acting Dean for Student Affairs, Student Welcome Center, A-111, [aspencer@fmcc.suny.edu](mailto:aspencer@fmcc.suny.edu), 518-736-3622 x8100.

The requirements and protections of this policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, race, color, national origin, religion, creed, age, disability, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, criminal conviction, or other protected classes covered by applicable federal, state, or local law. All requirements and protections are equitably provided to individuals regardless of such protected status(es) or status as a Complainant, Respondent, or Witness. Individuals who wish to file a complaint about the institution’s policy or process may contact the U.S. Department of Education’s Office for Civil Rights using contact information available at <https://ocrcas.ed.gov/contact-ocr>. Individuals may also file complaints with the New York State Division of Human Rights (DHR), using contact information available at <https://dhr.ny.gov/complaint>.

## **B. Introduction**

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

FMCC has adopted this Grievance Policy which provides for the prompt and equitable resolution of sex discrimination Complaints made by student, employees, or other individuals who are participating or attempting to participate in its Education Program or Activity, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX or the Title IX regulations.

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

On April 29, 2024, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that:

- Defines the meaning of “discrimination on the basis of sex” or “sex discrimination” and “sex-based harassment” (including forms of sex-based violence),
- Addresses how this FMCC must respond to reports of misconduct falling within that definition of sexual harassment, and

- Mandates a grievance process that this FMCC must follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

The full text of the Final Rule and its extensive Preamble are available here: <https://www.govinfo.gov/content/pkg/FR-2024-04-29/pdf/2024-07915.pdf>.

Based on the Final Rule, Fulton Montgomery Community College (“FMCC”) will implement the following Title IX Grievance Policy, effective August 1, 2024.

## **2. When does this Title IX Grievance Policy apply?**

This policy applies to incidents that occur on or after August 1, 2024. Any incidents reported under this Grievance Policy that occurred on or before July 31, 2024, will be processed through the Title IX Grievance Policy in effect at FMCC prior to August 1, 2024 (<https://fmcc.edu/about-fmcc/accreditation-college-policies>).

FMCC’s Title IX Coordinator or designee will determine if this Grievance Policy applies to a Complaint. This Policy will apply when the following elements are met, in the reasonable determination of the Title IX Coordinator:

- The conduct alleged occurred on or after August 1, 2024;
- The conduct alleged occurred in the United States, except for cases of sexual assault, domestic violence, dating violence and stalking, in which case, if such occurred off campus or during study abroad, will be subject to the jurisdiction to this Policy; <sup>1</sup>
- The conduct alleged occurred in FMCC’s Education Program or Activity; and
- The conduct alleged, if true, would constitute Discrimination on the Basis of Sex, or Sex-Based Harassment as defined in this Grievance Policy.

Conduct that occurs under FMCC’s Education Program or Activity includes but is not limited to conduct that occurs in a building owned or controlled by a student organization that is officially recognized by FMCC, and conduct that is subject to FMCC’s disciplinary authority under FMCC’s Student Code of Conduct.

If all elements of jurisdiction are met, FMCC will investigate the allegations according to this Grievance Policy as appropriate, unless informal resolution is pursued, or there are grounds for dismissal of the complaint.

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<sup>1</sup> FMCC has an obligation to address a sex-based hostile environment under its Education Program or Activity, even when some conduct alleged to be contributing to the Hostile Environment occurred outside FMCC’s Education Program or Activity, or outside of the United States. FMCC’s Title IX Coordinator will work with all Complainants to assess such complaints that may fall under these criteria, and direct to appropriate FMCC policies and procedures that may apply if this Grievance Policy does not. FMCC will communicate all such decisions in writing to the Complainant. Any such dismissals shall be subject to appropriate appeal rights under this Grievance Policy as outlined below.

The following acts shall also be referred to as **Prohibited Conduct** under this policy:

a. Discrimination on the Basis of Sex:

Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

b. Sex-Based Harassment:

Sex-based Harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity that is:

- i. Quid pro quo harassment: An employee, agent, or other person authorized by FMCC to provide an aid, benefit, or service under FMCC's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.
- ii. Hostile environment harassment: Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from FMCC's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:
  - The degree to which the conduct affected the complainant's ability to access FMCC's education program or activity;
  - The type, frequency, and duration of the conduct;
  - The parties' ages, roles within FMCC's education program or activity, previous interactions, and other factors about a party that may be relevant to evaluating the effects of the conduct;
  - The location of the conduct and the context in which the conduct occurred; and
  - Other sex-based harassment in FMCC's education program or activity.
- iii. Sexual assault: an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. Specifically, this includes:
  - (1) 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.
  - (2) 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 their age or because of their temporary or permanent mental incapacity.

(3) Incest—Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

(4) Statutory Rape—Sexual intercourse with a person who is under the statutory age of consent.

iv. Relationship Violence: under FMCC’s policies, the term “relationship violence” includes relationship violence, domestic violence, and dating violence as defined under federal and/or 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. Relationship Violence includes both domestic violence and dating violence.

Under federal law:

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 generally defined as a pattern of coercive tactics, which can include physical, psychological, sexual, economic and emotional abuse, perpetrated by one person against an adult intimate partner, with the goal of establishing and maintaining power and control over the victim. There is no specific crime of “domestic violence” under New York State law. Domestic violence is handled through the criminal courts and the Family Court as a “family offense.” A family offense is defined as certain acts/crimes delineated in the Penal Law (such as harassment, menacing, assault, and stalking) committed by a family member (individuals who are married, related by blood, or who have a child in common). Victims who meet this definition may go to criminal court to seek an order of protection



and have the abuser prosecuted, or they may go to Family Court for an order of protection, services, and assistance with custody and child support. Individuals victimized by an intimate partner who does not meet the definition of family member, such as a boyfriend or same-sex partner, can only go to criminal court for legal assistance. In addition, mandatory arrest, which applies when an abuser violates an order of protection or commits certain other offenses, is only applicable when a case involves individuals who meet the family definition. According to the NYS Office for the Prevention of Domestic Violence, however, many police departments in New York State use an expanded definition of family when making mandatory arrest determinations. This provides greater protection to victims who fall outside of the family definition, although these victims still do not have access to Family Court.

v. Stalking: Engaging in a course of conduct, on the basis of sex, directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress.

- “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.

Generally, stalking is a pattern of behavior that can include, but is not limited to the following:

- 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 New York law, a person engages in stalking when they intentionally, and for no legitimate purpose, engage 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 a person to reasonably fear that their 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.

c. Retaliation:

Retaliation means intimidation, threats, coercion, or discrimination against any person by FMCC, a student, or an employee or other person authorized by FMCC to provide aid, benefit, or service under FMCC’s education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or this Policy, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation or proceeding under this Policy.

The prohibition against retaliation applies to any individuals who participate (or refuse to participate) in any manner in an investigation and to any student who refuses to participate in an investigation or proceeding.

Retaliation may occur even where there is a finding of “not responsible” under this policy. Good faith actions lawfully pursued in response to a report of Prohibited Conduct are not Retaliation.

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

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

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

Specifically, our campus has the following policies:

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

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

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

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

Our existing Title IX office and reporting structure remains in place. What has changed is the way our Title IX office will handle different types of reports arising under Title IX.

### **C. General Rules of Application**

#### **1. Effective Date**

This Title IX Grievance Policy will become effective on August 1, 2024, and will only apply to incidents alleged to have occurred on or after August 1, 2024. Incidents occurring on or before July 31, 2024, will be investigated and adjudicated according to the process in place at the time the incident allegedly occurred.

#### **2. Revocation by Operation of Law**

Should any portion of the 2024 Title IX Final Rule (89 Fed. Reg. 33474 (Apr. 29, 2024)), be stayed or held invalid by a court of law, or if the 2024 Title IX Final Rule is withdrawn or modified to not require elements of this Grievance Policy, the Grievance Policy in its entirety, or the invalidated elements of this Grievance Policy, they will be deemed revoked, as well as any elements of the process that occur after that date, if a case is not complete by the date of the opinion or order publication by the Court. If this Grievance Policy is revoked in this manner, any conduct covered under this Grievance Policy shall be investigated and adjudicated under the previous 2020 Title IX Grievance Policy and/or Sexual Misconduct Policy. FMCC will update this Grievance Policy as soon as practicable to reflect any court rulings or changes that invalidate part of the Grievance Policy, if applicable.

## **D. Student's Bill of Rights**

All Students have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of Domestic Violence, Dating 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 judicial conduct process and/or criminal justice process free from pressure by 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 and violations;
7. Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from Retaliation by the institution, any Student, the Accused and/or 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 who may assist and advise a Reporting Individual or Complainant, Accused, or Respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial conduct process of the institution.

## **E. Definitions**

1. **Accused** means a person accused of a violation who has not yet entered an institutions judicial conduct process.
2. **Admission** means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an Education Program or Activity operated by FMCC.
3. **Advisor** Each party has the right to choose and consult with an advisor of their choice at their own expense. The advisor may be any person, including a friend, family member, therapist, union representative, or an attorney. FMCC will not limit their choice of advisor. Parties in this process may be accompanied by an advisor of choice to any meeting or proceeding to which they are required or are eligible to attend.

Except where explicitly stated by this policy, advisors shall not participate directly in the process. FMCC will provide the parties equal access to advisors; any restrictions on advisor participation will be applied equally.

The advisor may not represent, advocate, or speak on behalf of a complainant or respondent. An advisor may not disrupt or impede any resolution proceeding.

4. **Bystander** means a person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of the rules or policies of an institution.
5. **Code of Conduct** means the written policies adopted by an institution governing student behavior, rights, and responsibilities while such student is matriculated at the institution.
6. **Consent** means 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 act or prior consensual sexual activity between or with any Party does not necessarily constitute Consent to any other sexual act. 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. Incapacitation 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, or if an individual otherwise cannot 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. 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" and "affirmative consent" may be used interchangeably under this Grievance Policy.
7. **Complainant** means: (1) a student or employee who is alleged to have been subjected to conduct that could constitute Sex-Based Harassment as defined in these procedures and who was participating or attempting to participate in FMCC's Education Program or Activity; or  
  
(2) a person other than a student or employee who is alleged to have been subjected to conduct that could constitute Sex-Based Harassment under this grievance procedure and who was participating or attempting to participate in FMCC's Education Program or Activity at the time of the alleged Sex-Based Harassment.

A Complainant may also be referred to as a Reporting Individual in this Grievance Procedure, in alignment with New York State Education Law Article 129-B.

8. **Complaint** means an oral or written request to FMCC that objectively can be understood as a request for FMCC to investigate and make a determination about alleged Sex-Based Harassment at the institution.
9. **Confidential Employee/Resource** means:  
  
(1) an employee of FMCC whose communications are privileged under Federal or State law. The employee's confidential status is only with respect to information received while the

employee is functioning within the scope of their duties to which privilege or confidentiality applies;

(2) an employee of FMCC whom the recipient has designated as confidential for the purpose of providing services to persons related to Sex-Based Harassment. If the employee also has a duty not associated with providing those services, the employee's confidential status is only with respect to information received about Sex-Based Harassment in connection with providing those services; or

(3) an employee of FMCC who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about Sex-Based Harassment. The employee's confidential status is only with respect to information received while conducting the study.

10. **Decisionmaker** means a trained professional designated by FMCC to decide responsibility, sanction, or appeals. A Decisionmaker may be one person or a panel of multiple people as determined by FMCC. When there is no hearing, the investigator may be appointed as the Decisionmaker.
11. **Disciplinary Sanctions** means consequences imposed on a Respondent following a determination under this grievance procedure that the Respondent violated FMCC's prohibition on Sex-Based Harassment.
12. **Education Program or Activity** means all campus operations, including off-campus settings that are operated or overseen by the College, including, for example, field trips, online classes, and athletic programs; conduct subject to the College's disciplinary authority that occurs off-campus; conduct that takes place via FMCC-sponsored electronic devices, computer and internet networks and digital platforms operated by, or used in the operations of, FMCC. Conduct that occurs outside of the education program or activity may contribute to a hostile environment within the program or activity.
13. **Party** means Complainant or Respondent.
14. **Peer Retaliation** means Retaliation by a Student against another Student.
15. **Relevant** means related to the allegations of Sex-Based Harassment under investigation as part of this Grievance Policy. Questions are Relevant when they seek evidence that may aid in showing whether the alleged Sex-Based Harassment occurred, and evidence is Relevant when it may aid a decisionmaker in determining whether the alleged Sex-Based Harassment occurred.
16. **Remedies** means measures provided, as appropriate, to a Complainant or any other person FMCC identifies as having had their equal access to FMCC's Education Program or Activity limited or denied by Sex-Based Harassment. These measures are provided to restore or preserve that person's access to FMCC's Education Program or Activity after FMCC determines that Sex-Based Harassment occurred.
17. **Respondent** means a person who is alleged to have violated FMCC's prohibition on Sex-Based Harassment.

18. **Retaliation** means intimidation, threats, coercion, or discrimination by any person by FMCC, a Student, or an employee or other person authorized by FMCC to provide aid, benefit, or service under FMCC's Education Program or Activity, for the purpose of interfering with any right or privileged secured by Title IX, or because the person has reported information, made a complaint, testified, assisted or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this grievance procedure, or the informal resolution process.
19. **Student** means any person who has (or will have) attained student status by way of:
- Admission, housing or other service that requires student status.
  - Registration for one or more credit hours.
  - Enrollment in any non-credit, certificate or other program offered by FMCC.
20. **Supportive Measures** means individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a Complainant or Respondent, not for punitive or disciplinary reasons, and without fee or charge to the Complainant or Respondent to: (1) restore or preserve that Party's access to FMCC's Education Program or Activity, including measures that are designed to protect the safety of the Parties or FMCC's educational environment; or (2) provide support during FMCC's grievance procedures for Sex-Based Harassment or during the informal resolution process.

## **F. Policy for Alcohol and/or Drug Use Amnesty**

The health and safety of every student at FMCC 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 violence, including but not limited to domestic violence, dating 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 domestic violence, dating violence, stalking, or sexual assault to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating 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 domestic violence, dating violence, stalking, or sexual assault.

## **G. Conflicts of Interest of Bias**

Any individual carrying out any part of this policy shall be free from any actual conflict of interest or demonstrated bias that would impact the handling of a matter. Should the Title IX Coordinator have a conflict of interest, the Title IX Coordinator is to immediately notify the President and Director of Human Resources who will either take, or reassign, the role of Title IX Coordinator for purposes of carrying out the handling and finalization of the matter at issue. Should any investigator, Decisionmaker, or Appeals Officer have a conflict of interest, the investigator, Decisionmaker, or Appeals Officer is to notify the Title IX Coordinator upon discovery of the conflict so that the Title IX Coordinator may reassign the role as appropriate. This policy will note where parties have the opportunity to challenge the participation of any individual implementing this policy based on actual conflict of interest or demonstrated bias. The decisionmaker may be the same person as the Title IX

Coordinator or investigator as allowed by the 2024 Title IX Regulations; no inference of bias or conflict of interest can be drawn solely because the decisionmaker is the same person as the Title IX Coordinator or investigator in a case.

## **H. Disability Accommodations**

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

### **1. Requests for Reasonable Accommodations During the Title IX Grievance Process**

If Complainant or Respondent discloses a disability, the Title IX Coordinator may consult, as appropriate, with the Office of Accessibility, Counseling & Alternative Testing Services to provide support to students with disabilities to determine how to comply with applicable law including, without limitation, Section 504 of the Rehabilitation Act of 1973 in the implementing of any Supportive Measures, or any other reasonable accommodations requested during the Grievance Process.

## **I. Reporting Sex Discrimination, Including Sex-Based Harassment**

### **1. Employee Reporting Obligations**

FMCC believes it is important to be proactive in taking reasonable steps to identify and prevent incidents of sex discrimination. All employees, with limited exceptions as identified by FMCC, are required to promptly provide to the Title IX Coordinator all complaints or reports of sex discrimination, including sex-based harassment, that involve members of the FMCC community to the Title IX Coordinator and share all information reported or made available to the employee.

Non-confidential employees who fail to report and/or delay in reporting sex discrimination may be subject to discipline.

When providing this information to the Title IX Coordinator, the employee must include their own name and contact information, and all known details about an incident, which may include, if known, the dates, times, locations, names of involved individuals and the nature of the incident.

Aside from this reporting obligation, employees will, to the fullest extent possible, maintain the privacy of an individual’s information, consistent with FERPA.

FMCC also encourages employees who themselves experience sex discrimination to bring their concerns to the Title IX Coordinator and/or the Director of Human Resources/Deputy Title IX Coordinator, though they are not required to do so.



Researchers conducting an IRB-approved human subjects research study designed to gather information about sex discrimination are not required to report to the Title IX Coordinator disclosures made in the course of that study to the Title IX Coordinator.

In addition, certain employees of FMCC are considered by law to be mandatory reporters of child abuse, or abuse of persons with disabilities. These FMCC employees are required by law to report incidents of child abuse to the New York State Central Register of Child Abuse and Maltreatment (SCR), and incidents of abuse of persons with disabilities to the Vulnerable Persons' Central Register (VPCR). A fuller description of the mandatory child abuse reporting obligation and those covered by that obligation can be found at: Article 6 of New York's Social Services Law, and <https://ocfs.ny.gov/publications/Pub1159/OCFS-Pub1159.pdf>. A fuller description of the mandatory reporting requirements for suspected abuse of persons with disabilities can be found in Article 9 of New York's Social Services Law, and [https://www.justicecenter.ny.gov/system/files/documents/2019/11/reporting-requirements-for-human-services-professionals\\_v2\\_0.pdf](https://www.justicecenter.ny.gov/system/files/documents/2019/11/reporting-requirements-for-human-services-professionals_v2_0.pdf)

The College is also required to report certain information related to sexual assaults to state and federal agencies. More details regarding these reporting requirements can be found in Appendix C.

## **2. Who Can Make a Complaint?**

- A Complainant (as defined in Section D of this Grievance Policy);
- Parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant;
- The Title IX Coordinator;
- Any student or employee; or
- Any person other than a student or employee who was participating or attempting to participate in the recipient's education program or activity at the time of the alleged sex discrimination.

## **3. How to Make a Report to FMCC**

All complaints of violations of this policy will be taken seriously. The Title IX Coordinator will provide information and guidance regarding how to file a complaint with FMCC and/or local law enforcement, as well as information and assistance about what course of action may best support the individual(s) involved and how best to address the complaint.

Every reasonable effort will be made to maintain the privacy of those making a report to the extent possible. In all cases, FMCC will give consideration to the party bringing forward a report with respect to how the matter is pursued. FMCC may, when necessary to protect the community, initiate an investigation or take other responsive actions to a report, even when the person identifying a concern chooses not to participate in a resolution process and/or requests that FMCC not initiate the investigation.

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

#### Contact Information for the Title IX Coordinator:

Arlene Spencer  
Acting Dean of Student Affairs  
2805 State Highway 67  
Johnstown NY 12095  
[aspencer@fmcc.suny.edu](mailto:aspencer@fmcc.suny.edu)  
518-736-3622 ext. 8100

Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator. There is no timeline for making a report of sex discrimination; however, FMCC encourages the prompt reporting of a complaint as the ability of FMCC to pursue the complaint to conclusion may be hindered by the passage of time.

Additional information about reporting matters involving conduct by an employee may be found by contacting Human Resources:

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

#### **4. Confidential Reporting**

FMCC values the privacy of its students, employees, and other community members. Community members should be able to seek the assistance they need and access this policy without fear that the information they provide will be shared more broadly.

References made to privacy mean FMCC offices and employees who cannot guarantee confidentiality, but will maintain privacy to the greatest extent possible, relaying information as necessary to investigate or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. FMCC will limit the disclosure as much as practicable.

All activities under these procedures shall be conducted with the privacy interests of those involved. While FMCC will take all reasonable steps to protect the privacy of individuals involved in a complaint, it may be necessary to disclose some information to individuals or offices on campus in order to address a complaint or provide for the physical safety of an individual or the campus. Thus, FMCC cannot, and does not, guarantee that all information related to complaints will be kept confidential.

In order to maintain the privacy of evidence gathered as part of any resolution process, access to materials under the procedures in this policy will be provided only by a secure method and parties and

advisors are not permitted to make copies of any documents shared or make use of the documents outside of the processes described in this policy. Parties may request to review a hard copy of materials, and FMCC will make that available in a supervised or monitored setting. Inappropriately sharing materials provided during this process may constitute retaliation under this policy.

Individuals may speak confidentially with a Confidential Resource. Confidential Resources (e.g., licensed mental health care providers, physicians, clergy) may not report to Title IX Coordinator any identifying information about conduct that may violate FMCC's policies against sex discrimination without the written consent of the individual who supplied the information, unless required by law. Such disclosures will not be reported to the Title IX Coordinator or initiate any process under this policy. FMCC employs one type of employees who are not required to report information about sex discrimination to the Title IX Coordinator:

- Confidential employees whose communications are confidential under Federal or State law. The employee must be hired for and functioning within the scope of their duties to which the confidentiality applies. For example, physicians, clergy, and mental health counselors are all confidential employees. Disclosures made to these employees means that information cannot be disclosed to anyone internal or external to the College without the expressed permission from the individual disclosing the information.

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

- Title IX Coordinator or designee
- Chief Student Affairs Officer, 518-736-3622 ext. 8100
- Public Safety Office, 518-736-3622 ext. 8405
- All other employees at FMCC that are not designated as confidential resources.

The following Officials may provide confidentiality:

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

There are other confidential options available for crisis intervention, resources and referrals, but these are not reporting mechanisms to the institution, meaning that disclosure on a call to one of these hotlines does not provide any information to FMCC.

Complainants are encouraged to additionally contact a campus confidential or private resource to that FMCC can take appropriate action in these cases. Some resources for confidential disclosure **NOT** to the institution are:

- The New York State Office for the Prevention of Domestic Violence hotlines: <http://www.opdv.ny.gov/help/dvhotlines.html>. Additional disclosure and assistance options that can be found and are presented in several languages can also be found here: <http://www.opdv.ny.gov/help/index.html> (or by calling 1-800-942-6906).
- SurvJustice: <http://survjustice.org/our-services/civil-rights-complaints/>;
- Legal Momentum: <https://www.legalmomentum.org/>;
- NYSCASA: <https://nyscasa.org/responding>;
- NYSCADV: <http://www.nyscadv.org/>;

- Pandora's Project: <http://www.pandys.org/lgbtsurvivors.html>;
- GLBTQ Domestic Violence Project: <http://glbtqdv.org/>;
- RAINN: <https://www.rainn.org/get-help>; and
- Safe Horizons: <http://www.safehorizon.org/>.

## **5. Reporting to the Police**

Some Prohibited Conduct may constitute a violation of both the law and FMCC policy. FMCC encourages students to report alleged crimes promptly to local law enforcement agencies and/or state police. All persons have the right to file with law enforcement, as well as the right to decline to file with law enforcement. The decision not to file shall not be considered as evidence that there was not a violation of FMCC policy.

Criminal investigations may be useful in the gathering of relevant evidence, particularly forensic evidence. The standards for finding a violation of criminal law are different from the standards for finding a violation of this policy. Conduct may constitute Prohibited Conduct under this policy even if law enforcement agencies lack sufficient evidence of a crime and decline to prosecute.

Proceedings under this policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus. However, when a complaint is made to FMCC as well as to law enforcement, FMCC may delay its process if a law enforcement agency requests that FMCC delay its process for a reasonable amount of time to allow law enforcement to gather evidence of criminal misconduct. These temporary delays should not last more than ten days except when law enforcement specifically requests and justifies a longer delay. Criminal or legal proceedings are separate from the processes in this policy and do not determine whether this policy has been violated.

All investigations and determinations under this policy will be thorough, reliable and impartial, and will seek to collect evidence and names of witnesses to gather information that is directly or substantially relevant to whether the alleged policy violation occurred, and will not be based on the grounds that civil or criminal charges involving the same incident have been filed or that charges have been dismissed or reduced.

In the case of an emergency, where the physical well-being of a member of FMCC community or the safety of FMCC as an institution is threatened, any individual with such knowledge should promptly inform Public Safety. FMCC may take any immediate steps as may be necessary and appropriate under the circumstances to ensure the well-being of the College community and FMCC as an institution.

Additional information regarding reports to the police can be found in Appendix C.

## **6. Emergency Access to Information & Resources**

At any time, one of the following resources trained in interviewing victims of sexual assault will be available to provide information about options to proceed, and, where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible, and detailing that the criminal justice process 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. These individuals will also explain whether they are authorized to offer the reporting individual confidentiality or privacy, and shall inform the reporting individual of other reporting options:

Title IX Coordinator  
Arlene Spencer  
Acting Dean of Student Affairs  
2805 State Highway 67 Johnstown NY 12095  
[aspencer@fmcc.suny.edu](mailto:aspencer@fmcc.suny.edu)  
518-736-3622 ext. 8100

The Title IX Coordinator will generally be available for emergency access on weekdays during normal business hours. When the Title IX Coordinator is not available, emergency access to a designee will be available, at the following: Public Safety Office 518-736-3622 ext. 8405.

## **J. Responding to a Report**

The following process will be used following the receipt of a report of sex discrimination.

### **1. Initial Contact**

Following receipt of a report alleging a potential violation of this policy, the Title IX Coordinator will contact the complainant to meet with the Title IX Coordinator for an initial intake and assessment meeting, and will provide the following:

- An invitation to meet to offer assistance and explain their rights, resources, and options under this policy;
- Access to this policy;
- Information regarding available campus and community resources for counseling, health care, mental health, or victim advocacy. Upon request, information regarding legal assistance, visa and immigration assistance, student financial aid and other available services may be provided;
- The availability of Supportive Measures regardless of whether a complaint is filed and/or any resolution is initiated;
- The options for resolution (no action, prevention, agreement, investigation) and how to initiate such resolution processes;
- The right to notify law enforcement as well as the right not to notify law enforcement;
- The importance of preserving evidence and, in the case of potential criminal misconduct, how to get assistance from Public Safety/Campus Police or local law enforcement in preserving evidence;
- The right to an advisor of choice, if applicable, during FMCC proceedings under this policy including the initial meeting with the Title IX Coordinator;
- A statement that retaliation for filing a complaint, or participating in the complaint process, is prohibited.
- Information on how to initiate the Investigation or Resolution-Based Agreement process.
- Ensure that the Complainant receives a written explanation of all available resources and options and is offered the opportunity to meet and discuss the resources and options, including

information about STI's, forensic exams, and resources available through NYS Office of Victim Services.

## **2. Initial Intake & Assessment**

The Initial Assessment process seeks to gather information about the nature and circumstances of the report to determine whether this policy applies to the report and, if so, which resolution process may be appropriate, as well as which section of the resolution procedures apply based on the conduct and the status of the parties. The Title IX Coordinator may also determine that the provision of supportive measures only is the appropriate response under the policy. The initial assessment is not a finding of fact or responsibility. If the individual bringing forward the complaint is not the actual complainant, the Title IX Coordinator will limit communication to general information on policies and processes.

Should the complainant wish to initiate a resolution process, the Title IX Coordinator will determine whether this policy applies and, if so, the appropriate process under this policy. The Title IX Coordinator will communicate to the complainant this determination.

If the information provided does not suggest a potential violation of this policy, the Title IX Coordinator will provide the complainant written notice that the matter is being referred for handling under a different policy, and/or to another appropriate office for handling.

## **3. Supportive Measures**

Complainants and Respondents (as defined above) have the right to receive supportive measures from FMCC regardless of whether they file a complaint. Supportive measures are non-disciplinary and non-punitive. Supportive measures may vary depending upon what is reasonably available at FMCC.

Supportive measures are individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent to:

- Restore or preserve that party's access to FMCC's education program or activity, including measures that are designed to protect the safety of the parties or FMCC's educational environment; or
- Provide support during FMCC's resolution procedures or during an alternative resolution process.

Supportive measures may include, but are not limited to:

- Counseling services
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- campus escort services, as available
- Restrictions on contact applied to one or more Parties (no contact orders)
- Changes in class, work, housing, extracurricular or any other activity, regardless of whether there is or is not a comparable alternative

- Increased security and monitoring of certain areas of the campus
- Room changes
- Training and education programs related to Sex-Based Harassment
- Assistance by FMCC's police or security forces, if applicable, or other officials in obtaining an order of protection or, if outside of New York state, an equivalent protective or restraining order
- Other supportive measures deemed fit for the situation.

Supportive measures must not unreasonably burden either Party and must be designed to protect the safety of Parties or FMCC's educational environment, or to provide support during FMCC's Sex-Based Harassment grievance process under this policy, or informal resolution process.

FMCC may modify or terminate supportive measures at the conclusion of the grievance procedures, or at the conclusion of the informal resolution process, or may continue them beyond that point within FMCC's discretion.

FMCC will not disclose information about any supportive measures to persons other than the person to whom they apply, including informing one Party of supportive measures provided to another Party, unless necessary to provide the supportive measure or restore or preserve Party's access to FMCC's Education Program or Activity, or there is an exception that applies, such as:

- FMCC has obtained prior written consent from a person with the legal right to consent to the disclosure;
- When the information is disclosed to an appropriate third Party with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue;
- To carry out the purpose of the policy when it is necessary to address conduct that reasonably may constitute Sex-Based Harassment under Title IX in FMCC's Education Program or Activity;
- As required by Federal law, federal regulations, or the terms and conditions of a federal award; or
- To the extent such disclosures are not otherwise in conflict with Title IX, when required by State or local law or when permitted under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g, or its implementing regulations, 34 CFR Part 99).

***Note on Orders of Protection and their equivalent:*** FMCC must provide a copy of the order of protection or equivalent when it is received by FMCC, and Parties shall have the opportunity to meet or speak with the Title IX Coordinator, who can explain the order and answer questions about it, including information from the order about the Accused/Respondent's responsibility to stay away from the protected person or persons. Parties are entitled to an explanation of the consequences for violating these orders, including without limitation, arrest, additional conduct charges, and interim suspension or emergency removal, as applicable. A Complainant is also entitled to receive assistance from University Police/Campus Security, in effecting an arrest when an individual violates an order of protection or, if University Police/Campus Security does not possess arresting powers, then to call on and assist local law enforcement in effecting an arrest for violating such order, in accordance with limits on current law enforcement jurisdiction and procedures.

#### **4. Process for Review of Supportive Measures**

FMCC provides for a Complainant or Respondent to seek modification or reversal of FMCC's decision to provide, deny, modify or terminate a supportive measure. Grounds for challenge of supportive measures include, but are not limited to:

- Whether a supportive measure is reasonably burdensome;
- Whether a supportive measure is reasonably available;
- Whether a supportive measure is being imposed for punitive or disciplinary reasons;
- Whether the supportive measure is being imposed without fee or charge; and
- Whether the supportive measure is effective in meeting the purposes for which it is intended, including to restore or preserve access to the Education Program or Activity, provide safety, or provide support during the Grievance Process.

The review will be conducted by an impartial employee of FMCC, who did not make the challenged decision on the original supportive measure request. The impartial employee of FMCC who makes this determination will have the authority to modify or reverse the decision if that impartial employee determines that the decision to provide, deny, modify, or terminate the supportive measure was inconsistent with the procedures as outlined above for providing supportive measures in accordance with the Title IX regulations. The impartial employee will typically respond to the challenge within five (5) days.

Parties are only allowed to challenge their own individual supportive measures. Challenges by one Party will not be heard to supportive measures afforded to the opposite Party, unless that supportive measure directly impacts the Party making such challenge (i.e., two-way no contact orders).

## **5. Requests for Confidentiality or No Further Action**

When a complainant withdraws any or all of the allegations in a complaint, requests that FMCC not use their name as part of any resolution process, or that FMCC not take any further action, FMCC will generally try to honor those requests. However, there are certain instances in which FMCC has a broader obligation to the community and may need to act against the wishes of the complainant if the conduct alleged presents an imminent and serious threat to the health or safety of complainant or other person, or where the conduct as alleged prevents the recipient from ensuring equal access based on sex to its education program or activity. In such circumstances, the Title IX Coordinator will notify the complainant in writing of the need to take action. The factors the Title IX Coordinator will consider when determining whether to act against the wishes of a complainant include:

- a. The complainant's request not to proceed with initiation of a complaint;
- b. The complainant's reasonable safety concerns regarding initiation of a complaint;
- c. The risk that additional acts of Prohibited Conduct would occur if a complaint is not initiated;
- d. The severity of the alleged Prohibited Conduct, including whether the discrimination, if established, would require the removal of a respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
- e. The age and relationship of the parties, including whether the respondent is an employee of FMCC, or whether the impacted person is a minor;
- f. The scope of the alleged discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals;
- g. The availability of evidence to assist a Decisionmaker in determining whether sex discrimination occurred;



- h. Whether FMCC could end the alleged sex discrimination and prevent its recurrence without initiating its resolution procedures under this policy;
- i. Whether the conduct as alleged presents an imminent and serious threat to the health or safety of the complainant or other persons, or that the conduct as alleged prevents FMCC from ensuring equal access on the basis of sex to its education program or activity;
- j. Whether the accused has a history of violent behavior or is a repeat offender;
- k. Whether the incidents represents an escalation on the part of the person accused;
- l. Whether the accused used a weapon or force; and/or
- m. Whether available information reveals a pattern of perpetration at a given location by a particular group.

If after considering these and other Relevant factors, the Title IX Coordinator determines that the conduct as alleged presents as an imminent and serious threat to the health or safety of the Complainant or other person, or that the conduct as alleged prevents FMCC from ensuring equal access on the basis of sex to its Education Program or Activity, the Title IX Coordinator may initiate a Complaint.

If the Title IX Coordinator does initiate the Complaint after making this determination, the Title IX Coordinator must notify the Complainant prior to doing so and appropriately address reasonable concerns about the Complainant's safety or the safety of others.

## **6. Emergency Removal**

For sex discrimination and sex-based harassment, FMCC retains the authority to remove a respondent from FMCC's program or activity on an emergency basis, where FMCC (1) undertakes an individualized safety and risk analysis, (2) determines that an imminent and serious threat to the health or safety of a complainant or any student, employee, or other individual arising from the allegations of sex discrimination justifies a removal, and (3) FMCC provides the respondent with notice of and an opportunity to challenge the decision immediately following the removal.

The Respondent may challenge the decision immediately following the removal, by notifying the Title IX Coordinator in writing. FMCC will designate an impartial individual, not otherwise involved in the case, to consider the challenge to the removal and determine if the emergency removal was reasonable.

FMCC will provide both the Accused or Respondent and the reporting individual a prompt review, reasonable under the circumstances, of the need for and terms of a mandatory interim suspension, in which they are allowed to submit evidence in support of their request.

Emergency removals will not be considered Relevant evidence that can be considered in reaching a determination of whether Sex-Based Harassment occurred.

## **7. Administrative Leave**

FMCC retains the authority to place a non-student employee Respondent on administrative leave during the Title IX Grievance Process, consistent with any applicable employee handbook, applicable collective bargaining agreement, and code of conduct. Administrative leave may be a supportive measure, emergency removal, or consistent with collective bargaining agreement. Administrative leave

implemented as a supportive measure or as emergency removal is subject to the procedural provisions above, including the right to challenge the decision to implement that measure.

**Note on student employees:** when a Complainant or Respondent is both a student and an employee of FMCC, FMCC must make a fact-specific inquiry to determine whether this procedure applies to that student employee. FMCC will consider if the Complainant or Respondent's primary relationship with FMCC is to receive an education and whether alleged Sex-Based Harassment occurred while the Party was performing employment-related work.

## **8. Dismissal of a Complaint**

Before dismissing a complaint, FMCC will make reasonable efforts to clarify the allegations with the complainant.

FMCC may dismiss a complaint if:

- FMCC is unable to identify the respondent after taking reasonable steps to do so;
- The respondent is not participating in FMCC's education program or activity and is not employed by FMCC;
- The complainant voluntarily withdraws their complaint in writing and the Title IX Coordinator declines to initiate a complaint.
- The complainant voluntarily withdraws some but not all allegations in a complaint in writing, and FMCC determines that, the conduct that remains alleged in the complaint would not constitute Prohibited Conduct under this policy; or
- FMCC determines the conduct alleged in the complaint, even if proven, would not constitute Prohibited Conduct under this policy.

Upon dismissal, FMCC will promptly notify the complainant in writing of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then FMCC will notify the parties simultaneously in writing. If a dismissal of one or more allegations changes the appropriate decision-making process under these procedures, the Title IX Coordinator will include that information in the notification.

FMCC will notify the complainant that a dismissal may be appealed on the basis outlined in the Appeals section. If dismissal occurs after the respondent has been notified of the allegations, then FMCC will also notify the respondent that the dismissal may be appealed on the same bases. If a dismissal is appealed, FMCC will follow the procedures outlined in the Appeals section of these procedures.

When a complaint is dismissed, FMCC will, at a minimum:

- Offer supportive measures to the complainant as appropriate;
- If the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and,
- Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not continue or recur within FMCC's education program or activity.

A complainant who decides to withdraw a complaint or any portion of it may later request to reinstate it or refile it.

## **9. Referrals for Other Misconduct**

FMCC has the discretion to refer complaints of misconduct not covered by this policy for handling under any other applicable FMCC policy or code. As part of any such referral for further handling, FMCC may use evidence already gathered through any process covered by this policy.

Should there be a conflict between the provision of this policy and other FMCC policies, procedures, rules, regulations, or terms or conditions of employment, the provisions of this policy will govern unless specifically stated otherwise.

This policy and these procedures are separate from FMCC's student disciplinary processes, by which FMCC may bring a discipline charge against a student for violating FMCC policy according to the provisions found in FMCC's Code of Conduct: <https://fmcc.edu/student-experience> The Source - Student Handbook, Appendix C.

## **10. Consolidation of Cases**

FMCC may consolidate complaints under this policy as appropriate: for example, if there are multiple complaints where the allegations of Prohibited Conduct arise out of the same facts or circumstances, or there are multiple complaints with overlapping parties.

FMCC also reserves the right to use this policy to adjudicate other allegations and conduct charges as defined by policies outside of the scope of this policy in instances when the conduct is associated with an alleged issue of Prohibited Conduct under this policy. The Title IX Coordinator will address these consolidated complaints in collaboration and coordination with other appropriate offices, such as Human Resources. Allegations of a violation of a separate policy are not required to be handled using the procedural requirements set forth in this policy.

## **11. Student Withdrawal or Employee Resignation while Matters are Pending**

If a student or employee respondent permanently withdraws or resigns from FMCC with unresolved allegations pending, FMCC will consider whether and how to proceed with the resolution process. FMCC will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s) and any ongoing effects of the alleged Prohibited Conduct.

A student respondent who withdraws or leaves while the process is pending may not return to FMCC without first resolving any pending matters. Such exclusion applies to all FMCC campuses and programs. Admissions will be notified that the student cannot be readmitted. They may also be barred from FMCC property or events. If a student respondent withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely, and that student is not permitted to return to FMCC unless and until the matter is fully resolved.

An employee respondent who resigns with unresolved allegations pending is not eligible for rehire with FMCC and the records retained by the Title IX Coordinator will reflect that status. All FMCC responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

## **12. Coordination Among Multiple Institutions**

When such conduct involves students or employees from two or more institutions, such institutions may work collaboratively to address the conduct provided that such collaboration complies with the Family Educational Rights and Privacy Act.

## **13. Allegations Potentially Falling Under Two Policies**

If the alleged conduct, if true, includes conduct that would be Prohibited Conduct under this Policy and conduct that would not constitute Prohibited Conduct under this Policy, the Title IX Grievance Process will be applied to investigation and adjudication of only the allegations that constitute Prohibited Conduct under this Policy.

If allegations are initially investigated under this Policy, but are determined not to meet the standard for Prohibited Conduct under this Policy, the College may continue to investigate the allegations under the Discrimination and Harassment Policy, the Student Code of Conduct, the Employee Handbook, and/or any other applicable FMCC policy or procedure.

## **K. Options for Resolution**

There are multiple ways to resolve a complaint or report of sex discrimination. Whenever possible, FMCC will utilize the resolution method chosen by the complainant. During the resolution of a complaint, the Title IX Coordinator will determine whether to implement reasonable supportive measures designed to assist all parties (complainants and respondents) and community members in maintaining access to and participation in FMCC programs, services and activities during the resolution of the complaint.

This section includes information on support-based Resolution, agreement-based resolution, and investigation and decision making procedures.

### **1. Support-Based Resolution**

A support-based resolution is an option for a complainant who does not wish FMCC to take any further steps to address their concern, and when the Title IX Coordinator determines that another form of resolution, or further action, is not required. Some types of support that may be appropriate include: adjustments or changes to class schedules; moving from one residence hall room to another; adjusted deadlines for projects or assignments; adjustments to work schedule or arrangements; escorts to and around campus; or counseling.

A support-based resolution does not preclude later use of another form of resolution, for example if new information becomes available to FMCC and the Title IX Coordinator determines there is need for additional steps to be taken, or the complainant later decides to pursue a Resolution Agreement or investigation and decision making.

## 2. Agreement-Based Resolution

Agreement-Based Resolution is an alternative to the investigation and decision making procedures where the Parties each voluntarily agree to resolve the complaint in a way that does not include an investigation and does not include any finding of responsibility. Agreement-Based Resolution is a voluntary, structured interaction between or among affected parties that balances support and accountability. If the College offers Agreement-Based Resolution to the parties, and they voluntarily consent to engage in that process, the Title IX Coordinator must still take other prompt and effective steps as needed to ensure that sex discrimination does not continue or recur within the education program or activity. Parties and the Title IX Coordinator may agree to pause or exit the investigation and decision making resolution procedures to explore Agreement-Based Resolution.

Any party may design the proposed agreement between the parties. The Title IX Coordinator must approve of the use of the Agreement-Based Resolution process, and approve the final agreement between the parties. Agreement-Based Resolution may be initiated at any time prior to the release of the final determination. Because Agreement-Based Resolution does not involve an investigation, there is not any determination made as to whether a respondent violated this policy.

The Title IX Coordinator has the discretion to determine that Agreement-Based Resolution is not an appropriate way to address the reported conduct, and that the matter must instead be resolved through an investigation and decision making process.

### a. Initiating the Agreement-Based Resolution Process

Prior to the initiation of Agreement-Based Resolution, the Title IX Coordinator will provide the Parties written notice that includes:

- The specific allegation and the specific conduct that is alleged to have occurred;
- The requirements of the Agreement-Based Resolution process;
- Any consequences resulting from participating in the Agreement-Based Resolution process, including the records that will be maintained or could be shared, and whether FMCC could disclose such information for use in a future FMCC resolution process, including an investigation and resolution process arising from the same or different allegations, as may be appropriate.
- Notice that an agreement resulting from the Agreement-Based Resolution process is binding only on the parties and is not subject to appeal.
- Notice that once the Agreement is finalized and signed by the Parties, they cannot initiate or continue an investigation procedure arising from the same allegations.
- A statement indicating that the decision to participate in the Agreement-Based Resolution process does not presume that the conduct at issue has occurred.

- A statement that the respondent is presumed not responsible for violating this policy, unless respondent admits to violations of this policy;
- An explanation that all parties may be accompanied by an advisor of their choice, who may be a parent, colleague, friend, or attorney;
- A statement that any party has the right to withdraw from the Agreement-Based Resolution process and initiate or resume resolution procedures at any time before agreeing to a resolution;
- The date and time of the initial meeting with staff or the Title IX Coordinator, with a minimum of 3 days' notice;
- Information regarding Supportive Measures, which are available equally to the parties; and
- The potential terms that may be requested or offered in an Agreement-Based Resolution agreement.

b. Facilitating an Agreement

If all Parties are willing to explore Agreement-Based Resolution, the Title IX Coordinator or designee will then meet separately with each party to discuss the Agreement-Based Resolution process and facilitate an agreement. If an agreement cannot be reached, either because the Parties do not agree, determine they no longer wish to participate in the Agreement-Based Resolution process, or the Title IX Coordinator does not believe that the terms of the agreement or continuing the Agreement-Based Resolution process is appropriate, the Title IX Coordinator may decide that the reported conduct will instead be addressed through the investigation and decision making process. The Title IX Coordinator will inform the parties of such a decision, in writing.

Agreement-Based Resolution processes are managed by facilitators who do not have a conflict of interest or bias in favor of or against complainants or respondents generally or regarding the specific parties in the matter. The Title IX Coordinator may serve as the facilitator, subject to these restrictions. The investigator or Decisionmaker for the matter may not facilitate an Agreement-Based Resolution in that same matter.

Any party may craft or create the terms of their agreement and will be asked for their suggestions or ideas. Examples of agreements may include but are not limited to:

- an agreement that the respondent will change classes or housing assignments;
- an agreement that the Parties will not communicate or otherwise engage with one another;
- an agreement that the Parties will not contact one another;
- completion of a training or educational project by the respondent;
- completion of a community service project by the respondent;

- an agreement to engage in a restorative justice process or facilitated dialogue; and/or
- discipline agreed upon by all parties.

In order to facilitate Agreement-Based Resolution, information shared by any party will not be used in any related resolution process of the same complaint under this policy. No evidence concerning the allegations obtained within the Agreement-Based Resolution process may be disseminated to any outside person, provided that any party to the Agreement-Based Resolution process may generally discuss the allegations under investigation with a parent, advisor, or other source of emotional support, or with an advocacy organization. An admission of responsibility made during an Agreement-Based Resolution process, however, may not be incorporated into the investigation and adjudication proceeding.

c. Finalizing the Resolution Agreement

Once the final terms of the Resolution Agreement have been agreed upon by all parties, in writing, and approved by the Title IX Coordinator, the matter will be considered closed, and no further action will be taken. Once signed, no appeal is permitted. The Agreement-Based Resolution process is generally expected to be completed within thirty (30) days and may be extended by the Title IX Coordinator as appropriate. All parties will be notified, in writing, of any extension and the reason for the extension.

Records of an Agreement-Based Resolution process can be shared with other offices as appropriate.

Any violations of the terms of the Resolution Agreement may result in disciplinary action.

**3. Investigation & Decision-Making Resolution Procedures for all Title IX Cases**

This policy includes two types of investigation and decision-making procedures.

- All prohibited conduct matters except for sex-based harassment involving a student as a party,
- Sex-based harassment involving a student as a party.

The following information applies to both types of the investigation and decision-making procedures.

a. Acceptance of Responsibility

If a respondent accepts responsibility for all or part of the Prohibited Conduct alleged, the Title IX Coordinator or designated sanctioning officer will issue an appropriate sanction or responsive action as to those violation(s) and continue processing any remaining allegations of Prohibited Conduct, if any.

b. Assignment of the Investigator and/or Decision Maker

FMCC will assign a trained investigator and/or Decisionmaker to conduct an adequate, reliable, and impartial investigation and determination, as applicable, in a reasonably prompt timeframe. FMCC reserves the right to utilize internal or external investigators and Decision Makers.

All parties have the option to participate in the investigation, and each have the same rights during the resolution process including the right to an advisor, to submit relevant witness names and evidence,

and to review the evidence gathered by the investigator prior to the investigator providing the final report to the Decision Maker.

The investigator will establish deadlines for submission of names of relevant witnesses and submission of evidence and communicate those deadlines to the parties in writing.

c. Conflict of Interest or Bias

After a Notice of Allegations is issued to all parties, any party may object to the participation of the Title IX Coordinator or designated investigator on the grounds of a demonstrated bias or actual conflict of interest. All parties will have three (3) days from the date of the Notice of Allegations to object to the selection of the investigator or the Title IX Coordinator. Objections to the Title IX Coordinator are to be made, in writing, to the President and/or Director of Human Resources. Objections to the appointment of the investigator are to be made in writing, to the Title IX Coordinator. All objections will be considered, and changes made as appropriate. If the objection is substantiated as to either the Title IX Coordinator or the Investigator, that individual shall be replaced. Any change will be communicated in writing.

d. Timeline

FMCC strives to complete the investigation process within ninety (90) days from the date of the Notice of Allegations.

The timeline for any part of the resolution process may be extended for good cause by the Title IX Coordinator. All parties shall be notified, in writing, of any extension to the timeline that is granted, the reason for the extension, and the new anticipated date of conclusion of the investigation and/or hearing. Good cause reasons for extension may include ensuring availability of witnesses and other participants and ensuring participants have sufficient time to review materials.

FMCC shall not unreasonably deny a student party's request for an extension of a deadline related to a complaint during periods of examinations or school closures.

The investigator and/or Title IX Coordinator shall provide the Parties with periodic status updates, in writing.

e. Burden and Standard of Review

FMCC has the burden of conducting an investigation that gathers sufficient evidence to determine whether Prohibited Conduct occurred. This burden does not rest with any party, and any party may decide to limit their participation in part or all of the process, or to decline to participate. This does not shift the burden of proof away from FMCC and does not indicate responsibility. The standard of proof used in any investigation and decision making process is the preponderance of the evidence standard, which means more likely than not.

f. Written Notice of Meetings

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



g. Evidence Gathering

*Interviews*

The investigator will interview all parties and relevant witnesses and gather relevant documentary evidence provided by the parties and any identified witnesses. Interviews may be conducted in person, or via video conference. When a party meets with an investigator, the investigator will ask questions related to the allegations in the complaint and a party is given the opportunity to speak to the allegations and related events. Parties may identify fact witnesses and provide evidence that is relevant to the allegations and not otherwise impermissible. This will include inculpatory evidence (that tends to show it more likely that someone committed a violation) and exculpatory evidence (that tends to show it less likely that someone committed a violation). The investigator ultimately determines whom to interview to determine the facts relevant to the complaint.

*Impermissible Evidence*

The following types of evidence, and questions seeking that evidence, are impermissible. This means this information will not be accessed or considered, except by FMCC to determine whether one of the exceptions listed below applies. This information will not be disclosed or otherwise used, regardless of relevance:

- Evidence that is protected under a privilege recognized by Federal or State law, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- Evidence provided to an employee designated by FMCC as exempt from internal reporting under this policy, unless the person who made the disclosure or otherwise provided evidence to that employee has voluntarily consented to re-disclosure;
- A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless FMCC obtains that party's or witness's voluntary, written consent for use in its resolution procedures; and
- Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to alleged sex-based harassment. The fact of prior consensual sexual conduct between the parties does not by itself demonstrate or imply the complainant's consent to other sexual activity or preclude a determination that Prohibited Conduct occurred.
- Under New York state law, in matters of sexual assault, domestic violence, dating violence, and stalking, all parties have the right to exclude their own prior sexual history with persons other than the other party in the investigation and decision making process or their own mental health diagnosis and/or treatment from admittance in the institution disciplinary stage that determines responsibility. The limit does not cover evidence of prior sexual history with the other party in the investigation that is relevant to an allegation or defense of an allegation.

#### **4. Investigation & Decision Making Procedures for all Prohibited Conduct Except Sex-Based Harassment Involving a Student Party**

The following requirements apply to all manners of Prohibited Conduct being investigated and determined under this Policy except for sex-based harassment involving a student as a party.

FMCC will assign a trained investigator and Decisionmaker to conduct an adequate, reliable, and impartial investigation and determination in a reasonably prompt timeframe. FMCC reserves the right to utilize internal or external investigators and decision makers.

All parties have the option to participate in the investigation, and each have the same rights during the resolution process including the right to an advisor, to submit relevant witness names and evidence, and to review the evidence gathered by the investigator prior to the investigator's making any findings.

##### **a. Notice of Allegations**

Prior to the start of an investigation, the Parties will be provided a written Notice of Allegations communicating the initiation of an investigation. Should additional allegations be brought forward, or information regarding location or date of the incident(s), a revised written Notice of Allegations shall be provided to all parties.

The Notice shall include, at a minimum:

- FMCC's resolution procedures, including the applicable determination procedure, and any alternative resolution process, with a link to the full procedures;
- The specific allegations, including the identity of the parties, and dates and location if known;
- Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), a description of the facts alleged to constitute Prohibited Conduct, the type of Prohibited Conduct, and the date(s) and location(s) of the alleged incident(s);
- A statement that Retaliation is prohibited;
- Contact information for the assigned investigator and Decisionmaker, as well as the process for raising a challenge to the appointed investigator, Decisionmaker, or Title IX Coordinator, and the deadline for doing so;
- Expected length of the major stages of the resolution process, as well as any applicable deadlines;
- Whether the Investigator, or another individual, shall serve as the Decisionmaker;
- A statement that the respondent is presumed not responsible for Prohibited Conduct until a determination is made at the conclusion of the investigation and decision making procedures. Prior to such a determination, the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial Decisionmaker;

- The parties may have an advisor of their choice who may be anyone, including but not limited to: a friend, colleague, therapist, or attorney. The advisor may not represent, advocate, or speak on behalf of a complainant or respondent. An advisor may not disrupt or impede any resolution proceeding;
- The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence, and to provide a response;
- A statement that FMCC prohibits knowingly making false statements or knowingly submitting false information during resolution procedures, with a link to the relevant policy(ies);
- The date and time of the initial interview with the investigator, with a minimum of five (5) days' notice.

If, in the course of an investigation, FMCC decides to investigate additional allegations that are not included in the original issued written Notice of Allegations, or that are included in a complaint that is consolidated under this Grievance Process, FMCC shall provide notice of the additional allegations to the Parties whose identities are known.

#### b. Individual Interviews

The investigator will hold individual interviews with parties and witnesses to ask relevant and not otherwise impermissible questions and follow-up questions, including questions exploring credibility. Only the investigator and the party or witness may attend each individual interview, and a party may be accompanied by their advisor. Additional attendees may be permitted at the discretion of the Title IX Coordinator in connection with an approved disability-related accommodation. All persons present at any time during any part of the investigation or resolution process are expected to maintain the privacy of the proceedings and not discuss or otherwise share any information learned as part of those proceedings, and may be subject to further FMCC discipline for failure to do so.

FMCC may also adopt and apply other reasonable rules regarding decorum, provided they apply equally to the parties.

The individual interviews may be conducted with all participants physically present in the same geographic location, or, at FMCC's discretion, with all participants joining virtually through a video conferencing option.

FMCC will share expectations of decorum to be observed at all times in any meeting or proceeding under this policy. These expectations are applied equally to all parties and advisors. FMCC has the discretion to remove, with or without prior warning, from any meeting or proceeding an involved party, witness, or advisor who does not comply with these expectations and any other applicable FMCC rules.

#### c. Evidence Review

At the conclusion of all fact-gathering, the investigator will provide each party and their advisor, if any, the opportunity to review all relevant and not otherwise impermissible evidence gathered.

The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation and to submit any additional relevant evidence, questions for parties or witnesses, or the names of any additional witnesses with relevant information. This is the final opportunity to offer evidence, or names of witnesses. Given the sensitive nature of the information provided, FMCC will facilitate this review in a secure manner. None of the parties nor their advisors may copy, remove, photograph, print, image, videotape, record, or in any manner otherwise duplicate or remove the information provided. Any student or employee who fails to abide by this may be subject to discipline. Any advisor who fails to abide by this may be subject to discipline and/or may be excluded from further participation in the process.

The parties will have a minimum of five (5) days to inspect and review the evidence and submit a written response in writing to the investigator. FMCC will provide access to copies of the parties' written responses to the investigator to all parties and their advisors, if any. The Title IX Coordinator shall have the discretion to extend the evidence review period based on the volume and nature of the evidence. At the conclusion of the evidence review, when deemed appropriate by the investigator, the investigator shall then conduct any additional fact-gathering as may be necessary. If new, relevant evidence is gathered during this second fact-gathering period, the new evidence will be made available for review by the parties and their advisors. The parties shall have five (5) days to provide a response to the newly-gathered evidence. No new evidence will be accepted as part of any response, except that the investigator shall have the discretion to accept relevant evidence that was not previously available or known to exist, and that was not previously discoverable with the exercise of reasonable diligence.

The investigator will consider the parties' written responses before finalizing the investigation report.

The parties may each submit a written impact statement prior to the conclusion of the resolution process. The impact statement is not evidence and will be reviewed only after a determination of responsibility is reached.

#### d. Investigation Report

The investigator, who may also serve as the Decisionmaker, shall evaluate the relevant and not impermissible evidence and make factual determinations regarding each allegation, and also determine whether a violation of the policy occurred. The investigator may choose to place less or no weight upon statements by a party or witness who refused to respond to questions deemed relevant and not impermissible, or declined to participate. The investigator will not draw an inference about whether Prohibited Conduct occurred based solely on a party's or witness's refusal to respond to questions.

The investigator shall prepare a report which shall include:

- A description of the allegations of Prohibited Conduct;
- Information about the policies and procedures used to evaluate the allegations;
- A description of the procedural steps taken from the receipt of the complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, and methods used to gather other evidence;
- An evaluation of the relevant and not otherwise impermissible evidence and the rationale for that evaluation;

- Findings of fact for each allegation, with rationale;
- Conclusions regarding which section of this policy or other FMCC policy, if any, the respondent has or has not violated, with rationale.

This report shall be provided to the Title IX Coordinator. In the event that the Decisionmaker has determined that a violation of FMCC policy has occurred, the Title IX Coordinator shall then provide the report to the appropriate Sanctioning Officer to determine the sanction, and the Title IX Coordinator shall then determine the appropriate remedy(ies) for the complainant and any impacted parties. Past findings of responsibility relating to this policy or any other FMCC policy are admissible in the sanctioning stage only.

The Title IX Coordinator shall then provide the parties and their advisors, if any, with a written Notice of Outcome and a copy of the investigation report. The Notice of Outcome shall include:

- A statement of, and rationale for, any disciplinary sanctions the College imposed on the respondent
- A statement as to whether remedies will be provided to the Complainant
- For the complainant, a description of any remedies that apply to the complainant
- FMCC's procedures and the permitted reasons for the parties to appeal, including identifying the Appeals Officer.
- How to challenge participation by the Appeals Officer for bias or conflict of interest, which the Title IX Coordinator will resolve in their sole discretion.

The determination regarding responsibility becomes final either on the date that FMCC provides the parties with the written determination of the result of any appeal, or, if no party appeals, the date on which an appeal would no longer be considered timely.

## **5. Investigation & Decision Making Procedures in Cases of Sex-Based Harassment Involving a Student**

The following describes the next steps in investigation and decision making for matters of sex-based harassment in which a student is either a complainant or respondent, regardless of the status of the other party. The investigator may serve as the Decisionmaker.

An investigation process consists of five stages: written Notice of Allegations; evidence gathering; evidence review; final written determination; option to appeal.

### **a. Notice of Allegations**

Prior to the start of an investigation, the Parties will be provided a written Notice of Allegations communicating the initiation of an investigation. Should additional allegations be brought forward, or information regarding location or date of the incident(s), a revised written Notice of Allegations shall be provided to all parties.

The Notice shall include, at a minimum:

- FMCC's investigation procedures, including the applicable determination procedure that will be used in this investigation and resolution, and a link to the relevant policies;

- Information about the agreement-based resolution process, with a link to the full procedures;
- Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), a description of the facts alleged to constitute Prohibited Conduct, the specific type of Prohibited Conduct alleged under the policy, and the date(s), time(s), and location(s) of the alleged incident(s);
- A list of possible sanctions;
- A statement that retaliation is prohibited;
- Whether the investigator, or another individual, shall serve as the Decisionmaker;
- Expected length of the major stages of the resolution process, as well as any applicable deadlines;
- The Notice will inform the parties that the investigator will establish and communicate, in writing, all investigation deadlines, including the final deadlines for submitting names of witnesses, evidence, and relevant questions to ask a party or witness. These deadlines may be extended by the Title IX Coordinator for good cause, and any changes will be provided, in writing, to the parties, along with the rationale for the revised deadline(s);
- The process for raising a challenge to the appointed investigator, Decisionmaker or Title IX Coordinator, and the deadline for doing so;
- A statement that the respondent is presumed not responsible for Prohibited Conduct until a determination is made at the conclusion of the resolution process. Prior to such a determination, the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial Decisionmaker;
- A statement that the parties may have an advisor of their choice who may be a friend, parent, therapist, colleague, or attorney;
- The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence;
- Section IX(1)(b) of FMCC's Code of Conduct prohibits knowingly making false statements or knowingly submitting false information during the resolution procedures;
- The Decisionmaker will be identified. If FMCC assigns a different Decisionmaker, an updated notice will be provided to the parties.
- The date and time of the initial interview with the Investigator, with a minimum of five (5) days' notice.

b. Individual Interviews

The investigator will hold individual interviews with parties and witnesses to ask relevant and not otherwise impermissible questions and follow-up questions, including questions exploring credibility, and to request of the parties the names of relevant witnesses and relevant evidence. Only the

investigator and the party or witness may attend each individual interview, and a party may be accompanied by their advisor. Additional attendees may be permitted at the discretion of the Title IX Coordinator in connection with an approved disability-related accommodation. All persons present at any time during any part of the investigation or resolution process are expected to maintain the privacy of the proceedings and not discuss or otherwise share any information learned as part of the resolution process, and may be subject to further FMCC discipline for failure to do so.

Each party will be provided with an audio or audiovisual recording or transcript of the questioning of parties and witnesses with enough time for the party to have a reasonable opportunity to assess credibility and/or propose follow-up questions.

The investigator will then gather from parties, witnesses, and other sources, all relevant evidence.

At the initial interview with each party, the investigator will invite the parties to provide, in writing and in advance of the individual interviews, questions to ask of the parties and witnesses that are relevant and not otherwise permissible, including questions exploring credibility. Upon receiving the question list, the investigator will determine whether a proposed question is relevant and not otherwise impermissible and will explain, in writing in advance of the individual interview, any decision to exclude a question as not relevant or otherwise impermissible. Questions that are unclear or harassing of the party or witness being questioned will not be permitted. The investigator must give a party an opportunity to clarify or revise any question that the investigator has determined is unclear or harassing and, if the party sufficiently clarifies or revises a question, the question will be asked.

An investigator will not permit questions that are unclear or harassing of any party or witness being questioned.

FMCC will share expectations of decorum to be observed at all times in any meeting or proceeding under this policy. These expectations are applied equally to all parties and advisors. FMCC has the discretion to remove, with or without prior warning, from any meeting or proceeding an involved party, witness, or advisor who does not comply with these expectations and any other applicable FMCC rules.

The individual interviews may be conducted with all participants physically present in the same geographic location, or, at the FMCC's discretion, with all participants joining virtually through a video conferencing option.

The investigator will determine, in their sole discretion, whether parties and witnesses are likely to provide relevant information about the allegations and has the sole discretion to determine which parties and witnesses to call to an interview. The investigator may conduct follow-up interviews as they deem appropriate.

### c. Investigator Determination of Relevance

The investigator will determine whether parties and witnesses are likely to provide relevant information about the allegations, and has the sole discretion to determine which parties and witnesses to call to individual follow-up meetings.

The investigator will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance. Character evidence that is not relevant will not be considered. If the Decisionmaker is not the investigator, the Decisionmaker is not bound by the investigator's determinations about relevance.

d. Evidence Review

At the conclusion of all fact-gathering, the investigator will provide each party and their advisor the opportunity to review all relevant and not otherwise impermissible evidence gathered. In the event that an audio or audiovisual recording is shared, the recording will only be made available at an in-person and monitored meeting on campus, and will not otherwise be transmitted for review, so as to maintain the privacy of those participating in the process.

The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation and to submit any additional relevant evidence, questions for parties or witnesses, or the names of any additional witnesses with relevant information. This is the final opportunity to offer evidence or names of witnesses. Evidence not provided during the investigation process will not be considered by the Decisionmaker. Given the sensitive nature of the information provided, FMCC will facilitate this review in a secure manner. None of the parties nor their advisors may copy, remove, photograph, print, image, videotape, record, or in any manner otherwise duplicate or remove the information provided. Any student or employee who fails to abide by this may be subject to discipline. Any advisor who fails to abide by this may be subject to discipline and/or may be excluded from further participation in the process.

The parties will have a minimum of five (5) days to inspect and review the evidence and submit a written response in writing to the investigator. The Title IX Coordinator shall have the discretion to extend the evidence review period based on the volume and nature of the evidence.

When deemed appropriate by the investigator, the investigator shall then conduct any additional fact-gathering as may be necessary. If new, relevant evidence was submitted as part of evidence review, or is gathered during this second fact-gathering period, the new relevant evidence will be made available for review by the parties and their advisors. The parties shall have five (5) days to provide a response to the newly-gathered evidence. No new evidence will be accepted as part of any response, except that the investigator shall have the discretion to accept relevant evidence that was not previously available or known to exist, and that was not previously discoverable with the exercise of reasonable diligence.

The parties may each submit a written impact statement prior to the conclusion of the resolution process. The impact statement is not evidence, and will be reviewed only after a determination of responsibility is reached.

The investigator will consider the parties' written responses before finalizing the investigation report.

e. Determination and Investigation Report

The investigator may serve as the Decisionmaker. The Decisionmaker shall evaluate the relevant and not impermissible evidence and make a factual determinations regarding each allegation.

The Decisionmaker may choose to place less or no weight upon statements by a party or witness who refused to respond to questions deemed relevant and not otherwise impermissible, or who was not available, despite reasonable diligence, for a follow-up interview. The Decisionmaker will not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to questions.

The Decisionmaker shall then determine, based upon the factual findings, whether a violation of FMCC policy occurred. The Decisionmaker shall prepare a report which shall include:



- A description of the sex-based harassment;
- A reference to the policies and procedures used to evaluate the allegations;
- Description of all procedural steps taken to date;
- The Decisionmaker's evaluation of the relevant evidence along with the finding of facts;
- Determinations for each allegation, with the rationale;
- Sanction determination (if applicable);
- Whether remedies will be provided;
- The procedures for an appeal.

This report shall be provided to the Title IX Coordinator. In the event that the Decisionmaker has determined that a violation of FMCC policy has occurred, the Title IX Coordinator shall then provide the report to the appropriate Sanctioning Officer to determine the sanction, and the Title IX Coordinator shall then determine the appropriate remedy(ies) for the Complainant and any impacted parties.

- *Sanctioning Officer or Designee for Student Respondents:* Chief Student Affairs Officer
- *Sanctioning Officer or Designee for Staff Respondents:* Human Resources Administrator
- *Sanctioning Officer or Designee for Faculty Respondents:* Chief Academic Affairs Officer

The Title IX Coordinator shall then provide the parties and their advisors, if any, with a written Notice of Outcome and a copy of the Decisionmaker's report. The Notice of Outcome shall include any disciplinary sanctions for the respondent, whether remedies will be provided, and the procedures for appeal. In addition, the complainant shall be informed of any remedies that apply to the complainant.

The Title IX Coordinator will provide each party, and their advisor, written communication regarding the decision, the sanction determination, and the procedures for appeal, along with a copy of the Investigation Report. The Title IX Coordinator will also provide written communication to the Complainant regarding any appropriate remedies.

Past findings of responsibility relating to this policy or any other FMCC policy are admissible in the sanctioning stage only.

## **6. Timeline and Delays**

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

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

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

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

## **7. Appeals**

Dismissals of complaints and determinations made in the investigation and decision-making processes may be appealed in writing by either party. Appeals will be sent to the Title IX Coordinator, who will then send the appeal to the Appeals Panel assigned to conduct a written review of the appeal(s) and to make a final determination. Appeals must be in writing and filed within ten (10) days following the issuance of the outcome letter.

When an appeal is filed, the other party shall be notified and provided with a copy of the filed appeal within one (1) day, and have five (5) days to respond to the appeal in writing. Any party's decision not to submit a reply to an appeal is not evidence that the non-appealing party agreed with the appeal.

Within three (3) days of an Appeals Panel being assigned, either party may provide written objection to the Appeals Panel on the basis of an actual bias or conflict of interest. Any objection is to be sent to the Title IX Coordinator. Should the Title IX Coordinator determine that there is an actual bias or conflict of interest, the Title IX Coordinator will appoint another Appeals Panel.

Appeals may be filed only on the following three grounds:

- a. Procedural Error: A procedural error occurred would change the outcome. A description of the error and its impact on the outcome of the case must be included in the written appeal; or,
- b. New Evidence: New evidence or information has arisen that was not available or known to the party during the investigation or hearing, that would change the outcome. Information that was known to the party during the resolution process but which they chose not to present is not considered new information. The new evidence, an explanation as to why the evidence was not previously available or known, and an explanation of its potential impact on the investigation findings must be included in the written appeal; or
- c. Actual Conflict of Interest or Demonstrated Bias: The Title IX Coordinator, investigator, or others with a role in the process with an actual conflict of interest or demonstrated bias for or against complainants or respondents generally, or the individual complainant or respondent, that would change the outcome. Any evidence supporting the alleged conflict of interest or demonstrated bias must be included in the written appeal.

The Appeals Panel will make a determination regarding the appeal and communicate that decision, along with a rationale for the decision to the Title IX Coordinator who will communicate the Appeals Panel's decision to the parties. The decision of the Appeals Officer is final.

### **8. Failure to Complete Sanctions/Comply with Responsive Actions**

All responding parties are expected to comply with conduct sanctions/responsive actions/ corrective actions within the timeframe specified by FMCC. Responding parties needing an extension to comply with their sanctions must submit a written request to the Title IX Coordinator stating the reasons for needing additional time.

Failure to follow through on conduct sanctions/responsive actions/corrective actions by the date specified, whether by refusal, neglect or any other reason, may result in additional sanctions/responsive actions/corrective actions, such as suspension, expulsion, termination, or a transcript notation. Students who fail to comply will be referred to the [Office of Student Accountability] in accordance with FMCC's Code of Conduct. Employees who fail to comply will be referred to the Office of Human Resources (non-faculty employees), or the Office of the Provost (faculty) in accordance with FMCC's Employee Handbook/Faculty Handbook.

### **9. Notation on Student Transcripts for Crimes of Violence**

If a student is suspended or expelled as a result of being found responsible for a Crime of Violence, FMCC must make a notation on the student's transcript that the student was "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 crimes of violence are pending against the student, and declines to complete the disciplinary process, FMCC must make a notation on the student's transcript that they "withdrew with conduct charges pending." These transcript notations can be appealed by contacting the Provost.

Transcript notations for violence-related suspensions shall not be removed prior to one year after conclusion of the suspension. Transcript notations for violence-related expulsions shall never be removed from a student's transcript. A notation for an expulsion may not be removed via an appeal to FMCC. If a finding of responsibility is vacated for any reason, however, the transcript notation must be removed. Further, if a court of competent jurisdiction vacates a finding of responsibility for a violation of college policy, the transcript notation memorializing that finding will also be vacated.

### **L. Informal Resolution**

At any time prior to determining whether Sex-Based Harassment occurred under this Grievance Process, including prior to making a Complaint, Parties may instead FMCC's assistance to resolve allegations of Sex-Based Harassment, and may elect to enter the informal resolution process.

See attached **Appendix B** for information on the Informal Resolution Process

## **M. Retaliation**

When FMCC has information about conduct that reasonably may constitute Retaliation under Title IX or its Grievance Process, FMCC is obligated to initiate its Grievance Process or, as appropriate, FMCC's informal resolution process.

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

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

No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under this Title IX Grievance Process.

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations constitutes retaliation. This includes any charges filed against an individual for code of conduct violations that do not involve sex discrimination or Sex-Based Harassment, but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a report or complaint of Sex-Based Harassment.

Complaints alleging retaliation may be filed according to the Civil Rights Policy.

## **N. Sanctions**

One or more of the sanctions or disciplinary steps listed here may be imposed on a respondent who is found responsible for a violation of FMCC's policies. Sanctions or disciplinary steps not listed here may be imposed in consultation with the Title IX Coordinator.

The form of sanction or discipline used will depend on the nature of the offense, as well as any prior disciplinary history. Such discipline or sanction will be imposed pursuant to and in accordance with any and all applicable FMCC rules, policies, and procedures.

Factors considered when determining a sanction/ responsive action may include:

- The nature, severity, and circumstances surrounding the violation.
- An individual's disciplinary history.
- Previous resolutions or allegations involving similar conduct.
- The need for sanctions/responsive actions to bring an end to the sex discrimination or retaliation.

- The need for sanctions/responsive actions to prevent the future recurrence of sex discrimination or retaliation.
- The need to remedy the effects of the sex discrimination or retaliation on the victim and the campus community.

Student sanctions imposed are implemented when the decision is final (after an appeal, or, if there was no appeal, after the appeals period expires).

Possible sanctions and disciplinary steps for student respondents include, but are not limited to the following:

- Warning
- Disciplinary probation
- Loss of privileges
- Fines
- Restitution
- Sanctions
- Parental/guardian notification
- Residence hall suspension
- Residence hall expulsion
- Short-term college suspension
- Long-term college suspension
- Administrative suspension
- Expulsion
- Revocation of degree
- Withholding degree
- Prohibition of professional practice
- Mandatory assessment/counseling.

Possible sanctions and disciplinary steps for staff and faculty respondents include, but are not limited to:

- Verbal warning
- Written reprimand
- Mandatory training session(s)
- No contact order
- Suspension without pay
- Termination and/or termination with the issuance of a persona non grata letter

Faculty found responsible for violating this policy may be referred to the appropriate academic official for any other applicable processes.

## **O. Record Retention**

In implementing this policy, records of all reports and resolutions will be kept by the Coordinator in accordance with the applicable FMCC records retention schedule. All records will be afforded the confidentiality protections required by law, including but not limited to the Family Educational Rights and Privacy Act governing confidentiality of student information.

## **P. Additional Enforcement Information**

The U.S. Equal Employment Opportunity Commission (EEOC) investigates reports of unlawful harassment and discrimination, including sex-based harassment, in employment.

The U.S. Department of Education, Office for Civil Rights (OCR) investigates complaints of unlawful discrimination and harassment of students and employees in education programs or activities.

For more information, contact the nearest office of the EEOC or OCR.

US Department of Education  
Office for Civil Rights  
Contact information  
U.S. Equal Employment Opportunity Commission (EEOC)  
<https://www.eeoc.gov/contact-eeoc>

State Offices  
New York State Division of Human Rights (DHR)  
<https://dhr.ny.gov/complaint>

## **Q. Policy Review & Revision**

These policies and procedures will be reviewed and updated regularly by the Title IX Coordinator. The Title IX Coordinator will submit modifications to this policy in a manner consistent with institutional policy upon determining that changes to law, regulation or best practices require policy or procedural alterations not reflected in this policy and procedure. Procedures in effect at the time of its implementation will apply. The policy definitions in effect at the time of the conduct will apply even if the policy is changed subsequently, unless the parties consent to be bound by the current policy.

This policy may be revised at any time without notice. All revisions supersede prior policy and are effective immediately upon posting to FMCC's website.

## Appendix A - Bias/Conflict of Interest

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

Employment Status	
If the Title IX official is an employee of the recipient?	No  " [R]ecipients can comply with the final regulations by using the recipient's own employees" Title IX 85 Fed. Reg. 30,026, 30,252 (May 19, 2020) (to be codified at 34 C.F.R. pt. 106).
If the Title IX official is "affiliated" with the recipient?	No  "The Department declines to require recipients to use outside, unaffiliated Title IX personnel because the Department does not conclude that such prescription is necessary to effectuate the purposes of the final regulations" <i>Id.</i> at 30,252.
If the Title IX Official has a supervisory relationship with other Title IX personnel?	No  " [T]he Department declines to define certain employment relationships or administrative hierarchy arrangements as <i>per se</i> prohibited conflicts of interest" <i>Id.</i> at 30,252.  " [T]he final regulations do not prescribe any particular administrative 'chain of reporting' restrictions or declare any such administrative arrangements to be <i>per se</i> conflicts of interest prohibited under § 106.45(b)(1)(iii)." <i>Id.</i> at 30,252 n.1035.  " [T]he Department will hold a recipient accountable for the end result of using Title IX personnel free from conflicts of interest and bias, regardless of the employment or supervisory relationships among various Title IX personnel" <i>Id.</i> at 30,252.
Please note: Although the Department wishes only to prescribe those measures necessary for compliance, they do recognize that recipients may adopt additional "best practices" to avoid violating the regulations. <i>See id.</i> at 30,252. The Department specifically names two such practices: <ul style="list-style-type: none"> <li>• ensuring that investigators have institutional independence</li> <li>• deciding that Title IX Coordinators should have no role in the hiring or firing of investigators. <i>Id.</i></li> </ul>	
Professional Experiences or Affiliations	
A history of working in the field of sexual violence	No  " [T]he very training required by § 106.45(b)(1)(iii) is intended to provide Title IX personnel with the tools needed to serve impartially and without bias such that the prior professional experience of a person whom a recipient would like to have in a Title IX role need not disqualify the person from obtaining the requisite training to serve impartially in a Title IX role." <i>Id.</i> at 30,252.
Prior work as a victim advocate	No
Prior work as a defense attorney	No



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



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

## **Appendix B - Informal Resolution**

### **1. Procedures for Entering and Exiting Informal Resolution Process**

At any time prior to determining whether Sex-Based Harassment occurred under this Grievance Process, including prior to making a Complaint, Parties may instead FMCC's assistance to resolve allegations of Sex-Based Harassment, and may elect to enter the informal resolution process.

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

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

The Parties may elect to leave the informal resolution process at any point until the informal resolution process is concluded. If a Party elects to leave the informal resolution process, the Grievance Process that the Parties paused will continue. In participating in the informal resolution process, the Parties understand that the timeframes governing the Grievance Process will temporarily cease, and only reinstate upon reentry into the Grievance Process.

Supportive Measures will be available, or continue to be available if already provided, during an informal resolution process, if elected to proceed. The Title IX Coordinator will also, to the extent necessary, take other appropriate prompt and effective steps to ensure that Sex-Based Harassment does not continue or recur within FMCC's Education Program or Activity.

### **2. Notice Prior to Entry Into Informal Resolution Process**

Before the initiation of an informal resolution process, the Title IX Coordinator must provide to the Parties a written notice that explains:

- The allegations;
- The requirements of the informal resolution process;
- That, prior to agreeing to a resolution, any Party has the right to withdraw from the informal resolution process and to initiate or resume FMCC's Grievance Process;
- That the Parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the Parties from initiating or resuming FMCC's Grievance Process arising from the same allegations;
- The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the Parties; and
- What information FMCC will maintain and whether and how FMCC could disclose such information for use in its Grievance Process if they are initiated or resumed.

### 3. Determination to Approve Entry into Informal Resolution Process

Even where the Parties agree to submit a matter to informal resolution, the Title IX Coordinator or other designated official must approve the decision to move the matter to the informal resolution process and may determine that informal resolution is not appropriate under the circumstances.

Factors that the Title IX Coordinator or designated official may weigh in considering the appropriateness of the informal resolution process include, but are not limited to, the gravity of the allegations, whether there is an ongoing threat of harm or safety to the campus, whether the Respondent is a repeat offender, whether the alleged conduct would present a future risk of harm to others, and whether the Parties are participating in good faith. This determination is not subject to appeal.

Informal resolution may be available to address allegations of student-on-student and employee-on-student Sex-Based Harassment.

At any time after the commencement of the informal resolution process, the Title IX Coordinator or designated official may determine that the informal resolution process is not an appropriate method for resolving the matter, and may require that the matter be resolved through the Grievance Process. This determination is not subject to appeal.

If informal resolution is approved or denied, FMCC will provide the outcome in writing simultaneously to the Parties. If informal resolution is approved, the Title IX Coordinator shall also provide the information of the facilitator in writing to the Parties in a reasonable timeframe once the facilitator is assigned.

### 4. Role of the Facilitator

Informal resolution processes are managed by trained facilitators. All facilitators must not be the same person as the investigator or the/a decisionmaker(s) in FMCC's Grievance Process. Any person designated to facilitate informal resolution must not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. The Title IX Coordinator may never serve as the facilitator, subject to these restrictions.

All facilitators must have specialized training, required by law and regulation. Such training includes:

- FMCC's obligation to address sex discrimination, including Sex-Based Harassment, in its Education Program or Activity;
- The scope of conduct that constitutes sex discrimination, including Sex-Based Harassment, under Title IX, including the definition of Sex-Based Harassment;
- All applicable notification and information requirements related to parental, family, or marital status, including pregnancy and related conditions, and FMCC's response to sex discrimination;
- The rules and practices associated with FMCC's informal resolution process; and
- How to serve impartially, including by avoiding conflicts of interest and bias.

### 5. Contents of Informal Resolution Agreements

Potential terms that may be included in an informal resolution agreement between the Parties include but are not limited to:

- Restrictions on contact; and

- Restrictions on the Respondent’s participation in one or more of FMCC’s education programs or activities or attendance at specific events, including restrictions FMCC could have imposed as Remedies or Disciplinary Sanctions had FMCC determined at the conclusion of the Grievance Process that Sex-Based Harassment occurred.

#### 6. Breach of Informal Resolution Agreements

If a Party breaches the resolution or if FMCC has other compelling reasons, such as if it learns of any fraud by a Party in entering into the agreement, FMCC may void the agreement and initiate or resume the Grievance Process.

#### 7. Confidentiality

In entering the informal resolution process, the Parties agree that any testimony and evidence (including admissions of responsibility) they share or receive during the informal resolution process concerning the allegations of the complaint are confidential while the Parties participate in the informal resolution process. No evidence concerning the allegations obtained within the informal resolution process may be disseminated to any person, provided that any Party to the informal resolution process may generally discuss the allegations under investigation with a parent, friend, advisor, or other source of emotional support, or with an advocacy organization. Should the Parties withdraw from the informal resolution process, information disclosed or obtained for purposes of the informal resolution process may be incorporated into the Grievance Process, provided that this information is disclosed and reviewed by the Parties under FMCC’s Grievance Process.

#### 8. Informal Resolution Options

FMCC offers the following informal resolution procedures for addressing complaints of Sex-Based Harassment described under this Grievance Process:

##### Administrative Resolution

Should the Parties mutually determine to enter the informal resolution process, and the Respondent elects to accept responsibility for the allegations of the complaint at any point during the informal resolution process, the institution may administratively resolve the complaint.

Where the Respondent admits responsibility, the Parties will receive simultaneous written notification of the acceptance of responsibility, and [a decision-maker(s)] will convene to determine the Respondent’s sanction and other Remedies, as appropriate and consistent with institutional policy. The Parties will be given an opportunity to be heard at the sanctions hearing, including without limitation, the submission of impact statements, and the Parties may be accompanied by their Advisor, but questioning of Parties or witnesses will not be permitted. The Parties will receive simultaneous written notification of the decision regarding sanctions and Remedies, which may be appealed according to the process described in the Grievance Process.

## Appendix C

### **I. Response to an Incident of Sexual Assault, Relationship Violence, or Stalking**

#### **1. Rights of Reporting Individuals**

##### **A. Reporting**

Reporting individuals 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 FM 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.
- To disclose *confidentially* the incident and obtain services from New York State, Fulton or Montgomery County, or other outside resources.

##### **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 FM 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: Acting Dean of Student Affairs, Arlene Spencer, [aspencer@fmcc.edu](mailto:aspencer@fmcc.edu).

- o 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
  - FM Office of Public Safety, (518) 736-3622 ext. 8405, Physical Education Building, FM 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: 1-844845-7269.
- If a reporting individual wants or needs assistance in notifying the local Police Departments or State Police, he or she should contact FM’s Office of Public Safety who will assist in doing so. FM’s Office of Public Safety can be contacted at: (518) 736-3622 ext. 8405.
- Please note that there are significant differences between FM’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. FM’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 FM policy may be suspended, expelled or otherwise restricted from full participation in the FM 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: Acting Dean of Student Affairs, Arlene Spencer, [aspencer@fmcc.edu](mailto:aspencer@fmcc.edu).
- Reports can also be made to any FM employee. If a report is made to another FM employee, this employee will refer the report to the Title IX Coordinator.
  - Reports will be investigated in accordance with FM 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 FM.
- To file a Formal Title IX Complaint under the Title IX Grievance Procedure.
  - Formal Title IX Complaints can be made after consulting with the Title IX Coordinator, at the following: Acting Dean of Student Affairs, Arlene Spencer, [aspencer@fmcc.edu](mailto: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 Acting Dean of Student Affairs, Arlene Spencer, [aspencer@fmcc.edu](mailto:aspencer@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 FM process at any time.
  - If you choose to withdraw, however, FM may still have obligations to investigate and/or take actions under state or federal law. If FM 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.lasny.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:

<b>Program/Entity</b>	<b>Contact Information</b>	<b>Cost</b>
YWCA North Eastern NY (NENY)	P: (518) 374-3394 Hotline: (518) 374-3386 E: <a href="mailto:info@ywca-neny.org">info@ywca-neny.org</a> W: <a href="http://www.ywca-northeasternny.org/">http://www.ywca-northeasternny.org/</a>	No cost
Sexual Assault Support Services of Planned Parenthood Mohawk-Hudson	P: 518-736-1911 ext. 4221 Hotline: 866-307-4086 E: <a href="mailto:j.pustolka@ppmhchoices.org">j.pustolka@ppmhchoices.org</a> W: <a href="https://www.plannedparenthood.org/planned-parenthood-mohawk-hudson">https://www.plannedparenthood.org/planned-parenthood-mohawk-hudson</a>	No cost
Unity House	P: (518) 272-2370 W: <a href="https://www.unityhouseny.org/">https://www.unityhouseny.org/</a>	No cost
Equinox Domestic Violence Services	P: (518) 434-7865 W: <a href="http://www.equinoxinc.org/page/what-we-do-2.html">http://www.equinoxinc.org/page/what-we-do-2.html</a>	No cost
NYS Office for the Prevention of Domestic Violence	P: 1-800-942-6906 W: <a href="http://www.opdv.ny.gov/contact.html">http://www.opdv.ny.gov/contact.html</a>	No cost
New York State Coalition Against Sexual Assault	P: 1-800-942-6906 W: <a href="http://nyscasa.org/">http://nyscasa.org/</a>	For a fee

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

### 3. Assistance to Obtain an Order of Protection

- All reporting individuals have the right to have assistance from the FM 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.
  - FM serves as a resource to students in initiating these proceedings. However, FM 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: Public Safety Office, Deputy D. Capece, [dcapece@fmcc.edu](mailto:dcapece@fmcc.edu).
- An order of protection is issued by the court to limit the behavior of someone who harms or threatens to harm another person. It is used to address various types of safety issues, including, but not limited to situations involving relationship violence, stalking and sexual assault. Family Courts, criminal courts, and Supreme Courts can all issue orders of protection. An order of protection may direct the offending person not to injure, threaten or harass you, your family, or any other person(s) listed in the order.
- A Family Court order of protection is issued as part of a civil proceeding. Its purpose is to stop violence within a family, or within an intimate relationship, and provide protection for those individuals affected. All Family Court proceedings are confidential. To obtain an order of protection in the Family Court, your relationship to the other person must fall into one of the following categories: (1) current or former spouse, (2) someone with whom you have a child in common, (3) a family member to whom you are related by blood or marriage, or (4) someone with whom you have or have had an "intimate relationship." An intimate relationship does not have to be a sexual relationship. A relationship may be considered intimate depending on factors such as how often you see each other, or how long you have known each other. After a petition is filed, the court will decide if it is an intimate relationship.
- To start a proceeding in Family Court, you need to file a form called a Family Offense petition. You can contact the Family Court in your county for help completing and filing the petition. Contact information for the Family Courts in Fulton and Montgomery Counties is as follows:
  - Fulton County Family Court, 223 W Main St, Johnstown, NY 12095 (518) 706-3260
  - Montgomery County Family Court 58 Broadway, Fonda, NY 12068 (518) 853-8133
- You may also wish to speak with an attorney or domestic violence advocate before filing.

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

## II. Options for Confidentially Disclosing Sexual Assault, Relationship Violence, or Stalking

### 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 FM, this includes:

- St Mary's Healthcare Counseling Services, Student Development Center 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>, Online Anonymous Reporting Process.

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.)

<b>Program/Entity</b>	<b>Contact Information</b>	<b>Cost</b>
Sexual Assault Support Services of Planned Parenthood Mohawk-Hudson	P: 518-736-1911 ext. 4221 Hotline: 866-307-4086 E: <a href="mailto:j.pustolka@ppmhchoices.org">j.pustolka@ppmhchoices.org</a> W: <a href="https://www.plannedparenthood.org/planned-parenthood-mohawk-hudson">https://www.plannedparenthood.org/planned-parenthood-mohawk-hudson</a>	No cost
YWCA North Eastern NY (NENY)	P: 518-374-3394 Hotline: 518-374-3386 E: <a href="mailto:info@ywca-neny.org">info@ywca-neny.org</a> W: <a href="http://www.ywca-northeasternny.org/">http://www.ywca-northeasternny.org/</a>	No cost
Unity House	P: 518-272-2370 W: <a href="https://www.unityhousesny.org/">https://www.unityhousesny.org/</a>	No cost
Equinox Domestic Violence Services	P: 518-434-7865 W: <a href="http://www.equinoxinc.org/whatwedo/dv.php">http://www.equinoxinc.org/whatwedo/dv.php</a>	No cost
Legal Aid Society of Northeastern New York	P: 800-462-2922 W: <a href="http://www.lasnny.org">http://www.lasnny.org</a>	For a fee
Empire Justice Center	P: 518-462-6831 W: <a href="http://www.empirejustice.org">http://www.empirejustice.org</a>	No cost
NYS Office for the Prevention of Domestic Violence	P: 800-942-6906 W: <a href="http://www.opdv.ny.gov/contact.html">http://www.opdv.ny.gov/contact.html</a>	No cost
New York State Coalition Against Sexual Assault	P: 800-942-6906 W: <a href="http://nyscasa.org/">http://nyscasa.org/</a>	For a fee
Victim Advocacy Services (VAS) for Fulton, Montgomery, Hamilton Counties	P: 866-307-4086 W: <a href="https://www.plannedparenthood.org/planned-parenthood-mohawk-hudson/victim-advocacy-services">https://www.plannedparenthood.org/planned-parenthood-mohawk-hudson/victim-advocacy-services</a>	No cost
In Our Own Voices	P: 518-432-4188 W: <a href="http://www.inourownvoices.org">www.inourownvoices.org</a>	No cost

- Off-campus healthcare providers:

<b>Program/Entity</b>	<b>Location</b>	<b>Contact Information</b>	<b>Cost</b>
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
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- 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.

### **III. 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, FM 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 FM, will be offered training on the following topics, using a method and manner determined by FM:

1. FM 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, FM 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. FM will conduct these trainings for all new students, whether first-year or transfer, undergraduate, graduate, or professional. FM 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 FM's website, at <https://fmcc.edu/about-fmcc/accreditation-college-policies>, FMCC Board Policy.

#### B. Additional Training Provided by FM

In addition to the training outlined in the Policy, FM 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 FM.

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

1. FM'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 FM's policies;
3. the definition of "consent," in reference to sexual activity, under federal law, New York law, and FM's policies;
4. a description of FM'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 FM'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 FM;
7. information about how FM 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 FM to provide the accommodations or protective measures;
8. FM'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 FM and in the community; and

9. FM'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. FM's policy that, when a student or employee reports to FM 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 FM'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.

All employees also receive training related to their duties under Title IX promptly upon hiring or change of position that alters their duties under Title IX or this part, and annually thereafter. This training includes: the College's obligation to address sex discrimination in its education program or activity, the scope of conduct that constitutes sex discrimination under Title IX, including the definition of "sex-based harassment," and all applicable notification and information requirements under the Title IX regulations.

All investigators, decisionmakers, and other persons responsible for implementing the College's Title IX Policy and procedures, and all employee who have the authority to modify or terminate supportive measures, are also trained on the College's obligations under the Title IX regulations; the College's Title IX grievance procedures, how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; and the meaning and application of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance. Facilitators of the informal resolution process are also trained on the rules and practices associated with the College's informal resolution process and how to serve impartially, including by avoiding conflicts of interest and bias. In addition to the training requirements above, the Title IX Coordinator and any designees are trained on their specific responsibilities under Title IX, the College's recordkeeping system, and any other training necessary to coordinate the College's compliance with Title IX.

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 FM's public awareness campaign, FM 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 FM's website.

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

FM will engage in a regular assessment of their programming and policies to determine effectiveness. FM 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 FM

FM 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.

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

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

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

#### **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 FM 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.

FM will take steps to ensure that answers remain anonymous and that no individual is identified. Results will be published on the campus website providing no personally identifiable information shall be shared.

#### **V. Public Awareness Events**

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, which include the following but are not limited to:

Employees are required to report to the Title IX Coordinator information about sex discrimination they learn about at public awareness events. The Title IX Coordinator is not obligated to respond directly to any identified complainant in a report of sex-based harassment disclosed at a public awareness event that takes place on-campus or in a school-sponsored online platform unless there is an imminent and serious threat to someone's health or safety, and as such, no outreach to an identified complainant by the Title IX coordinator is required. The Title IX Coordinator must respond to reports of conduct that could constitute sex discrimination other than sex-based harassment if disclosed at public awareness events, wherever they occur. In all cases, FMCC must use the information to inform its efforts to prevent sex-based harassment, including by providing tailored training to address alleged sex-based harassment in a particular part of its education program or activity or at a specific location when information indicates there may be multiple incidents of sex-based harassment.