

Sex Discrimination and Sexual Harassment
Student

7.30035 DP
District Procedure

PURPOSE In accordance with board policy, the processes outlined in this procedure will apply when a complaint or allegation of discrimination, harassment, or retaliation is lodged by a student.

APPLICABILITY The policy applies to MCC students to include currently enrolled, potential students who have applied for admission, and individuals who were students at the time of the alleged behavior or conduct, contractors, visitors, volunteers, and board members in any aspect of MCC's educational programs, activities or employment that occur on MCC-controlled properties, as well as official offsite MCC-affiliated and sponsored events.

DEFINITIONS Complainant: A person who is alleged to be the victim of conduct that could constitute sex discrimination, sexual harassment, or retaliation.

Respondent: A person who has been reported to be the perpetrator of conduct that could constitute sex discrimination, sexual harassment, or retaliation violating our institution's policy.

Consent: An affirmative agreement through clear actions or words to engage in intimate activity. A person who is incapacitated unconscious, unaware, or otherwise physically helpless cannot give effective consent to sexual activity. One who is coerced; a minor; incapacitated due to disability; intoxicated; under the influence of drugs; or asleep cannot give effective consent.

- Consent is active, not passive.
- Silence, in and of itself, cannot be interpreted as consent.
- Previous relationships or prior consent cannot imply consent to future sexual acts.
- Consent can be withdrawn once given, as long as that withdrawal is clearly communicated

Quid Pro Quo Sexual Harassment: Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by a person having power or authority over another constitutes sexual harassment when submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's employment progress, development, or performance. This includes when submission to such conduct would be a condition for access to receiving the benefits of any educational [or employment] program.

Examples include an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention; to punish a refusal to comply with a sexually based request; to condition a benefit on submitting to sexual advances; sexual violence; intimate partner violence; stalking; gender-based bullying.

Sexual Assault Offenses:

- Forcible Rape: 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 Complainant.

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- Forcible Sodomy: Oral or anal sexual intercourse with another person, forcibly and/or against that person's will (*nonconsensual*) or not forcibly or against the person's will instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- Sexual Assault With An Object: To use an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will (*non-consensual*) or not forcibly or against the person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- Forcible Fondling: The touching of the private body parts of another person (*buttocks, groin, breasts*) for the purpose of sexual gratification, forcibly and/or against that person's will (*nonconsensual*) or not forcibly or against the person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- Incest: Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent as defined by the State of Missouri.

Dating Violence/Intimate Partner Violence (IPV): Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the complainant's statement and with consideration of the length of relationship, the type of the relationship, and the frequency of the interaction between the persons involved in the relationship.

Domestic Violence: A felony or misdemeanor crime 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 family violence laws of the jurisdiction in which the crime of violence occurred;
- By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred

Stalking: Engaging in a course of sex-based conduct 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. A 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.

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- Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim
- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling

Examples of stalking include, but are not limited to:

- Sending unsolicited or unwanted letters or emails
- Showing up at places without a legitimate reason
- Following, spying, or waiting at places the victim is at
- Leaving unwanted items, presents, or flowers

Sexual Exploitation: Occurs when an individual or individuals take nonconsensual or abusive sexual advantage of another for their own benefit or advantage, or for the benefit or advantage of a third party and that behavior does not otherwise constitute sexual harassment.

- Invasion of sexual privacy;
- Prostituting another person;
- Nonconsensual digital, video, or audio recording of nudity or sexual activity;
- Unauthorized sharing or distribution of digital, video, or audio recording of nudity or sexual activity;
- Knowingly exposing someone to or transmitting an STI, STD, or HIV to another person;
- Intentionally or recklessly exposing one's genitals in nonconsensual circumstances or inducing another to expose their genitals;
- Engaging in voyeurism;
- Going beyond the boundaries of consent (such as letting your friend hide in the closet to watch you and another person or persons have consensual sex); and
- Sexually-based stalking and/or bullying

Retaliation includes: intimidation, threats, coercion, abuse of process or discrimination by a person or a person's associates against any person who files a complaint or any person who participates in the investigation or resolution of a claim is prohibited. Individuals who engage in retaliation are subject to disciplinary action, including expulsion or termination.

Supportive Measure: Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.

Preponderance of Evidence: Evidentiary standard, used in a burden of proof analysis. The burden of proof is met when the fact finder/investigator determines that more likely than not, that there is greater than 50% chance, the claim(s) are true.

REPORTING

Individuals may file a complaint relating to discrimination, harassment, or retaliation may do so by reporting the matter to the Title IX Coordinator as noted below. Complaints can

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be made in person, by mail, by telephone, or electronic mail, using the contact information below.

Office of Civil Rights
Civil Rights Administrator
Email: Institutional.Equity@mcckc.edu
Phone: (816) 604-1353

Reports can also be made using the online reporting form posted at <https://mcckc.edu/civil-rights/report-incident.aspx>.

Reports against the Title IX Coordinator may be directed to the Chancellor. Reports made against the Chancellor or Trustee may be directed to the Board President.

Conflicts-of-interest or bias among OCR representatives, investigators, and decision-makers against a single party or parties is prohibited. Should a party feel conflict or bias exists, they should immediately report it to OCR. If the conflict or bias lies with OCR, they should report it directly to the Chancellor. The Chancellor will review or appoint a third party to review the conflict or bias.

Office of the Chancellor
3200 Broadway
Kansas City, 64111
Email: Chancellors.Office@mcckc.edu
Phone: (816) 604-1011

CRIMINAL INVESTIGATION If a law enforcement or regulatory agency notifies MCC that a criminal or regulatory investigation has been initiated, MCC shall partner with said law enforcement or regulatory agency and where appropriate proceed in accordance with applicable procedure. If civil or criminal charges involving the same incident have been filed and/or those charges have been dismissed or reduced, MCC's resolution will not typically be altered or precluded; however, MCC may undertake a short delay in its investigation or resolution process to comply with a law enforcement request for cooperation when criminal charges on the basis of the same behaviors that invoke this process are being investigated.

**CONFIDENTIALITY/
SUPPORTIVE MEASURES** Sex discrimination and harassment complaints will be handled discreetly but confidentiality or anonymity cannot be guaranteed because the college must investigate complaints of discrimination, harassment and retaliation to maintain a safe environment. If the complainant does not wish for their name to be shared or does not wish for an informal or formal investigation to take place, the complainant may make such a request to the Title IX Coordinator or designee who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. Cases that indicate patterns, predation, threat, weapons, and/or violence, lessen the likelihood of full confidentiality or anonymity.

In cases where the complainant requests confidentiality and the circumstances allow the College to honor that request, the College will offer supportive measures to the complainant, but will not otherwise pursue informal or formal action, as requested if

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able. These measures (offered to complainants and respondents) may include, but are not limited to:

- Withdrawal from class without financial or academic penalty
- Providing campus escorts
- Providing transportation accommodations
- Altering class or work schedules
- Implementing contact limitations between the parties
- Emergency removal provisions

The Title IX Coordinator has the authority to determine which supportive measures are necessary and appropriate and will maintain documentation related to said accommodations. The College will maintain as confidential any accommodations or supportive measures, provided that confidentiality does not impair the institution's ability to provide the accommodations or supportive measures.

CONFIDENTIAL
REPORTERS

If a complainant wishes to disclose sex discrimination or sexual harassment in confidence, without a report being made to the Title IX Coordinator, the following individual(s) can maintain confidentiality:

Director of Student Disability Services
Phone: (816) 604-1418
Email: mcc.confidential@mccc.edu

REPORTING AND
RESPONSE

All responsible employees are expected to immediately report actual or suspected discrimination, harassment or retaliation to the Title IX Coordinator (or a designee appointed by the Chancellor and/or Legal), within three (3) calendar days. A responsible employee who fails to reasonably report in the timeframe provided and/or intentionally tries to conceal incidents of this nature may be subject to disciplinary action.

Within three (3) calendar days of receiving a report or complaint of harassment, discrimination, or retaliation or other prohibited conduct under this policy, the individual (if not the Title IX Coordinator) who received the report or complaint will notify the Title IX or designee of the allegation(s); the time, date, and location of the incident; and the identity of the involved parties.

The Title IX Coordinator or designee will promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

AMNESTY

To encourage complainants and witnesses to make reports of conduct prohibited under this policy, the College will not pursue disciplinary action against students for disclosure of personal consumption of alcohol or other drugs (underage or illegal) where the disclosure is made in connection with a good faith report or investigation of prohibited conduct and the personal consumption did not place the health or safety of any other person at

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risk. The College may initiate an assessment or educational discussion or pursue other non-disciplinary options regarding alcohol or other drug use.

REVIEW

Upon receipt of a complaint, the Title IX Coordinator will complete an assessment to determine the next appropriate course of action.

ADVISORS

Both parties have the right to an advisor of their choice. The advisor, mentor, family member, attorney, or any other supporter a party chooses to advise them. The parties are entitled to be accompanied by their advisor in all meetings and interviews at which the party is entitled to be present, including intake, interviews, pre-hearings, hearings, and appeals. Advisors should help their advisees prepare for each meeting and are expected to advise ethically, with integrity, and in good faith. If a party does not have an advisor to conduct cross-examination, the College will provide one without fee or charge.

INFORMAL PROCESS

The purpose of the informal process is to review the complaint and constructively resolve the issue to come to a mutually acceptable agreement. If both parties voluntarily agree in writing to cooperate, the Title IX Coordinator or designee will facilitate and monitor the conversation. The conversations can take place through in-person, through online, telephone conferencing, or email.

Within three (3) calendar days, Title IX Coordinator or designee will notify the complainant and respondent in writing that the informal process has been initiated – both parties will have the opportunity to provide any relevant information.

The informal process may result in solutions such as asking the respondent to modify or stop the behavior, separating the complainant and respondent, and/or reaching a mutually acceptable agreement. However, this informal process will not result in formal disciplinary action against the respondent without a formal process. After a remedy is reached, Title IX Coordinator or designee will notify both parties in writing of the agreement. Title IX Coordinator will monitor the remedy and may inform other appropriate administrators (e.g., supervisors, Human Resources, Department Chairs, Police Department) to assist with monitoring.

If informal efforts are unsuccessful, the formal resolution process may be initiated. Either party has the right to end the informal process and begin the formal process at any time. The informal process will not be used to resolve allegations that an employee sexually harassed a student.

FORMAL PROCESS

The purpose of the formal resolution process is to formally investigate reports and/or claims of Sex Discrimination or Sexual Harassment and to address inquiries and coordinate the College's compliance efforts regarding such instances. The formal resolution process may result in formal disciplinary action against the respondent after thorough investigation.

If the complainant wishes to pursue a formal resolution, and the request is provided in writing, or if the College, based on the alleged policy violation, wants to pursue a formal resolution on the complainant's behalf, then the Title IX Coordinator or designee will appoint a trained investigator(s) to conduct the initial assessment. Within three (3) calendar days of determining that a formal process should proceed, the parties will be

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notified in writing. The investigation will entail interviews with all relevant parties, witnesses, and procurement of evidence. Any formal investigation or hearing will be conducted using a preponderance of evidence standard.

The following process will be implemented:

- The Title IX Coordinator or designee will review the report or complaint to determine the identity of the complainant and contact the complainant to discuss the incident and inform them of available resources and share rights and options (internal and external), and initiate any supportive measures, in coordination with campus partners.
- The Title IX Coordinator or designee will assign a trained investigator(s) to complete an initial assessment. In conjunction with the findings, the Title IX Coordinator will determine whether the formal resolution process should be used or the complaint will be dismissed. If there is a reason to pursue, the formal resolution will proceed. If there is no cause to pursue, the formal complaint will be dismissed or referred to the appropriate administrator and/or department for review (e.g., Human Resource Department)
- When it is determined whether a formal resolution process is warranted or not, both parties will be notified in writing within three (3) calendar days of that decision. The assigned investigator(s) will proceed with the investigation completing the investigative report, fairly, summarizing all relevant evidence, and providing it to the Vice President of Instruction and Student Services (VPISS) or designee. Ten (10) calendar days prior to completing the draft report and providing to the VPISS, the investigator will send the report to both parties and their respective advisors for review and written response. All evidence related to the allegation(s) will be included and disseminated.
- The VPISS or designee will facilitate the live hearing, as appropriate, including cross-examination of both parties by each party's advisor. The VPISS will provide the report to both parties, ten (10) days prior to the hearing, for review and comment. All hearings will be recorded, an audio, audiovisual, or transcript will be provided to both parties for inspection and review.
- Within seven (7) calendar days of the hearing, the VPISS or designee will provide the written determination, to both parties.
- Within five (5) calendar days of receipt of the determination by the VPISS or designee, either the complainant or respondent may appeal the determination in writing to the Campus President. The acceptable basis for an appeal is limited to the following:
 - The appearance of new evidence, unavailable or dismissed during the original hearing or investigation that could

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substantially impact the outcome of the matter. A summary of this new evidence and its potential impact must be included;

- A procedural irregularity occurred that impacted the outcome of the (i.e., material deviation from established procedures);
- The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias that affected the outcome of the matter.

- Within (10) ten calendar days of receipt of appeal request, the Campus President or designee will review the report, investigation materials, and determination. The determination will be communicated to both parties in writing.
- The President's or designee's decision is final; no further appeal is available. The determination regarding responsibility becomes final either on the date both parties are provided a written decision of the result of the appeal if an appeal is filed, or if an appeal is not filed, the date on which the appeal has expired.

PRE-HEARING AND
HEARINGS

The pre-hearing will take place no sooner than 10 (ten) after receipt of the investigation report from the hearing facilitator, the Vice President of Instruction and Student Services (VPISS) or designee, the hearing facilitator may appoint a Chair to assist with the hearing proceedings. The pre-hearing will allow each party and their respective advisor to discuss and review hearing procedures, provide relevant questions to be asked in the hearing for review, and learn expectations of all involved parties.

Hearings will be conducted live directly, orally, and in real-time and cross-examination will be facilitated by each party's advisor. Parties are not allowed to engage in cross-examination themselves.

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

The decision-maker will not be able to rely on/include an absent party's statement or present party's statement that is refusing to answer cross examination or other questions, or draw an inference about the determination regarding responsibility. This includes any party or witness that is not present or refuses to answer questions asked by the decision-maker, for the hearing and cross-examination. A hearing can take place virtually and/or in-person. All hearings will be recorded (audio, audiovisual, or transcript) and provided to both parties for inspection and review.

DISMISSAL

A complaint may be dismissed at any time during the investigation or hearing. The following are reasons a formal complaint may be dismissed (procedurally or voluntarily):

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- The conduct alleged in the formal complaint would not constitute sexual harassment as defined in this policy, even if proven;
- The conduct alleged did not occur in the recipient's education program, activity, or college property;
- The conduct alleged did not occur against a person in the United States;
- The complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
- The respondent is no longer enrolled or employed at the College;
- Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon dismissal, a notification will be sent, simultaneously in writing, to both parties, articulating the dismissal and reason(s) the complaint was dismissed and appeal options after dismissal.

Please note that dismissal does not prevent action under another provision of the College's code of conduct or by law enforcement.

Additionally, if the initial assessment supports referring to another department and/or administrator (e.g., Human Resources), the Title IX Coordinator can do so at that time.

TIMELINE

Complaints generally will be resolved within seventy (70) calendar days of the filing of the complaint. Where there is a need to extend this timeframe, for good cause, the parties will be notified of any delays and provided an explanation for the delay. Causes for delay include but are not limited to: schedule and availability of witnesses, holidays, semester breaks, non-contract days for faculty, concurrent law enforcement activity, or the need for language assistance or accommodation of disabilities. Both parties will receive regular updates regarding the status of the complaint.

SANCTIONS

Consequences for violating this policy will depend upon the facts and circumstances of each particular situation, using the preponderance of evidence standard. In determining the severity of sanctions or corrective actions, factors such as the frequency and severity of the offense and any history of past discriminatory, harassing, or retaliatory conduct are relevant. Sanctions or corrective actions range from a formal or written warning to expulsion or termination, following a determination of responsibility, including but not limited to:

- Warning – Written or Verbal
- Suspension
- Required Training or Education
- Expulsion
- Organizational Sanctions

**ADDITIONAL GUIDANCE
AND RESOURCES**

Any person who wishes to make a complaint of discrimination that also constitutes a crime such as sex discrimination that takes the form of sexual violence (including sexual assault) or criminal act involving dating violence, domestic violence, or stalking is encouraged to make a report with local law enforcement. Such persons may also contact

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college campus police at (816) 604-1200. If requested, the college will assist the complainant in notifying the appropriate law enforcement authorities. A victim may decline to notify authorities.

If you are the victim of sexual violence, including sexual assault, dating violence, domestic violence, or stalking, do not blame yourself. These crimes are never the victim's fault when the crime involves physical violence, the College recommends that victims immediately go to the emergency room of a local hospital.

If necessary, seek medical attention in an emergency room or other medical provider that performs legal rape exams. Some available resources include:

Name: St. Luke's Northland

Location: 5830 NW Barry Rd, Kansas City, MO, 64154

Contract Information: (816) 891-6010

A local resource providing counseling, mental health, referrals, and other services serving Jackson, Clay, Cass, and Platte counties are MOCSA (Metropolitan Organization to Counter Sexual Assault), 3100 Broadway, Suite 400, Kansas City, MO 64111-2591, telephone (816) 931-4527. MOCSA's 24-hour crisis hotline numbers are (816) 531-0233 and (913) 642-0233. Relay services are available by dialing 711. <http://www.mocsa.org/>.

A national resource is RAINN (Rape, Abuse & Incest National Network), and its 24-hour phone hotline number is (800) 656-HOPE (4673). RAINN's 24-hour online hotline is <http://apps.rainn.org/ohl-bridge/>.

Victims of sexual violence need to preserve evidence. Such evidence will be important in the event of criminal prosecution and to obtain a protection order against the respondent. Evidence will also be important in resolving any complaint filed with the College. Accordingly, everything possible should be done to preserve evidence by making sure that the crime scene is not disturbed. Victims of sexual violence should not bathe, urinate, douche, brush teeth, or drink liquids until after they are examined and, if necessary, a rape examination is completed. Clothes should not be changed. When necessary, victims should seek immediate medical attention at an area hospital and take a full change of clothing, including shoes, for use after a medical examination.

It is also important to preserve other types of evidence, such as letters, emails, text messages, social media posts, etc., to the extent such evidence exists. These types of evidence will also be useful when a complaint is being investigated.

Once a complaint of this nature is made, the complainant has several options such as, but not limited to:

- Contacting parents or a relative
- Seeking legal advice
- Seeking personal counseling (always recommended)
- Pursuing legal action against the perpetrator
- Pursing disciplinary action
- Asking for more information about this policy and the College's process for responding to a complaint.

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- Taking no further action

State law provides the right for a victim of one of these crimes to seek a protection order entered by a court that protects the victim from further contact with the respondent. If you wish to obtain such an order, the College will assist you in locating an attorney or similar advocate who can help you obtain such protection. Information about securing protection orders in Missouri can also be found at <http://www.courts.mo.gov/file.jsp?id=69655>. If a protection order is issued, a copy should be provided immediately to campus police or Title IX Coordinator. The College will take action to ensure compliance with the protection order on college property. Violation of such a protection order by the respondent constitutes a separate violation of this policy. Such a breach is subject to the full range of discipline, up to and including termination, expulsion, and exclusion from college programs and activities. Violations of protection orders will also be promptly reported to local law enforcement.

REFERENCE

7.30035 BP Sex Discrimination and Sexual Harassment - Student