

SEXUAL MISCONDUCT / TITLE IX COMPLAINT PROCEDURES:

As indicated previously MCC strives to cultivate a healthy and diverse community that recognizes the value of each individual and advances a safe, pleasant and respectful culture for all. We encourage anyone who has been the victim of sexual harassment, domestic violence, dating violence, sexual assault, sexual exploitation, stalking, or other sexual misconduct to report the incident promptly to the Title IX Coordinator or designee. This can be done by calling, writing or coming in to the office to report in person. In addition Campus Security is available 24/7 to assist. Sexual misconduct issues cover a wide range of behaviors, when in doubt please report the concern.

Amnesty to MCC Student Code of Conduct to Encourage Reporting

Students who in good faith report incidents of sexual assault or other sexual violence may be granted immunity for drug and alcohol use violations provided that such violations did not or do not place the health or safety of any other person at risk. The College, may, however, initiate an educational program or discussion with the individual regarding alcohol or drug use.

Confidentiality

Muskegon Community College will make every reasonable effort to preserve an individual's privacy and protect the confidentiality of information related to sexual harassment, sexual assault, domestic violence, dating violence, stalking and other sexual misconduct within the parameters imposed by law. The College may issue a safety alert, a brief description including time and location, to notify the community about the occurrence of a serious crime or pattern of crimes that might put the college community at risk. The College is also required by law to track and annually report sexual assault and other campus crime statistics to the public. These statistics and the list of people to whom a crime may be reported, appear in the Annual Campus Security Report. <http://www.muskegoncc.edu/student-services-and-administration/wp-content/uploads/sites/111/2015/10/safetybook2015.pdf>. Neither safety alerts nor campus crime statistics contain specific victim-identifying information.

Institutional Obligation

Because sexual misconduct is a serious offense that may threaten the community as a whole, in some instances the College may be obliged to pursue an alleged sexual assault through internal disciplinary procedures without the cooperation of the reporting party. Always in such instances, the College will inform the reporting party of its obligation to address a community safety issue.

Investigative Responsibilities

College's Responsibility

Once a report of sexual misconduct is made, the College is obligated to look into the issue and determine if an investigation is required, and to initiate appropriate judicial process. The College will consider utilizing all relevant internal disciplinary processes, as well as external criminal, civil, and administrative processes, regardless of whether the person assaulted wants to prosecute and/or participate. If a person discloses an incident that meets the definition of sexual assault, but does not personally define the incident as that, the employee still has an

obligation to report the incident to the appropriate Title IX authority. A counselor on campus may act as confidential resource should the reporting party be looking for support. During the investigation of any reported sexual assault, the College may have an obligation to take appropriate interim steps to ensure the safety and welfare of the college community, including but not limited to, changing class schedules, suspending or limiting the right of the responding party to be on campus.

Campus Notification

Once a report of sexual misconduct is made, the College is obligated by law to take all necessary steps to protect the campus and the person who has been assaulted. This may include alerting the campus of crimes that it determines pose a threat to members of the campus community. In making such determinations, the College will consider the safety of students, faculty/staff and the college community as well as the privacy interests of all persons involved in such incidents. Regardless of the action taken by the MCC, the name of any person involved will not appear on security alerts.

Campus Crime Reporting

In compliance with the Clery Act (Campus Crime Statistics Act), all members of the college excluding privileged sources (Counselors), notified of a sexual assault are required to inform the Title IX Coordinator and the incident will be included in campus crime statistics. Typically, the following information is included: crime, date, location, and status (i.e. student, faculty, staff, unknown individual, etc.) of the individuals involved in the crime. The college never includes the names of the reporting party or the responding party in crime statistics.

MCC will apply appropriate disciplinary procedures to those who violate this policy. The procedures set forth below are intended to afford a prompt response to charges of sexual assault, domestic or dating violence, stalking, and harassment to maintain confidentiality and fairness consistent with applicable legal requirements, and to impose appropriate sanctions on violators of this policy.

Evidence

1. In the event of sexual assault, medical forensic investigations may be performed at a local emergency room on a 24-hour on call basis for both females and males. To arrange for an examination the victim must report within 72 hours of an incident. Victims should avoid showering or bathing prior to receiving an examination as valuable evidence could be lost.
2. It is also important to preserve evidence by saving text messages, instant messages, social networking pages, other communications and keeping pictures, logs or copies of other documents that would be pertinent in an investigation.
3. As time passes, evidence may dissipate or become lost or unavailable, thereby making investigation, possible prosecution, disciplinary proceedings, or other legal action related to the incident more difficult. If a victim is unsure about filing a complaint regarding an incident, he or she should consider speaking with Campus Security or local law enforcement to preserve evidence in the event that the victim changes her/his mind at a later date.

4. MCC will provide referrals to persons who have been victims of sexual misconduct regarding resources on campus which are available at no cost to students, as well as referrals to resources off campus. If a victim is accessing community and non-MCC services, payment for these services will be subject to state/local laws, insurance requirements, etc.

Intake of Reports

MCC employees will be responsive to those who report all forms of sexual misconduct. Employees taking a complaint must inform the reporting party about their right to file criminal charges as well as provide details as to the availability of resources. Reporting party's will be provided information regarding counseling, healthcare, mental health services, victim advocacy, legal assistance and additional remedies to prevent contact between a reporting party and accused or responding party. Such remedies could include making changes to academic, transportation, and/or working conditions, if reasonably available. MCC will provide the student or employee a written explanation of their rights and options regardless of whether the offense occurred off campus or on campus.

MCC does not publish the name of crime victims nor house identifiable information regarding victims in the campus security department Daily Crime Log or online.

Reporting a Complaint

Reports concerning sexual harassment, sex/gender discrimination, sexual assault/misconduct or violations of the Sexual Misconduct Policy should be filed with the Title IX Coordinator or his/her designee. The Title IX Coordinator may, in his or her discretion, dismiss a grievance if he/she determines the person filing the complaint is not entitled to use this process. The primary concern of MCC is the safety of our campus community. To facilitate reporting, minor infractions by the reporting party will be addressed informally whenever possible.

The Title IX Coordinator may modify these procedures at any time as deemed appropriate for compliance with federal, state, local law or applicable guidance. The campus community will be notified of any changes via email as well as on the College Sexual Misconduct webpage.

Title IX Coordinator and Deputy Coordinators:

Kristine Anderson, (Title IX Coordinator)
Executive Director of Human Resources
231-777-0447, Room 400

Deputy Title IX Coordinators

Sally Birkam, Dean of Student Success and Campus Life
231-777-0216, Room 103

Marty McDermott, Director of Athletics & Health/Wellness Operations
231-777-0462, Gym Offices

Larry Visconti, Counselor
231-777-0356, Room 101

Eli Fox, Manager of Student Success & Veteran Services
LGBTQIA
231-777-0342, Room 103

Seth York, Counselor
231-777-0296, Room 101

Tonette Brown-Garner, College Services Evening Coordinator
231-777-0654, Room 1119

Timeliness

All reports or complaints should be made as promptly as feasible after the occurrence. A delay in reporting may be reasonable under some circumstances, as determined on a case-by-case basis. An unreasonable delay in reporting, however, is an appropriate consideration in evaluating the merits of a complaint or report. Complaints should be made within 180 days of the incident.

Administrative Action

The College recognizes its obligation to address incidents of sexual misconduct, discrimination and harassment on campus when it becomes aware of its existence even if no complaints are filed; therefore, the College reserves the right to take appropriate action unilaterally under this procedure, including but not limited to issuing no-contact orders, modification of course-schedules, etc.

Withdrawal of Complaint

The reporting party may withdraw the complaint at any point during the investigation; however, if there is a danger to the parties involved or to the community, the Title IX Coordinator may determine in his or her discretion that further investigation is warranted despite the reporting party's desire to withdraw the complaint.

Privacy of Proceedings and Records

Although college officials will maintain an individual's privacy to the best of their ability, individuals should know that College officials (outside the context of licensed counselors and health professionals hired in their private capacity) may not be able to maintain legal confidentiality of the reporting party, but will maintain his or her privacy. The College's ability to investigate may be limited if a reporting party reports anonymously. Investigators and those involved with the investigation are individually charged to preserve privacy with respect to any matter investigated or heard. A breach of the duty to preserve privacy is considered a serious offense and may subject the offender to appropriate disciplinary action. Parties and witnesses are also admonished to maintain privacy with regard to these proceedings, and if they are college employees, failure to maintain said privacy may result in appropriate disciplinary action. Breaches of confidentiality or retaliation against: the person bringing the complaint; any person

assisting with the investigation; or the person or individuals being charged with the complaint; will result in disciplinary review. The College will take responsive action if such retaliation occurs, up to and including termination and/or expulsion.

Investigations

In the event that an investigation is required, the process may take up to 60 business days to complete from start to finish, though many cases will be resolved in less time.

- A. It is the responsibility of the Title IX Coordinator to determine the most appropriate means for addressing the report or complaint. Options include but are not limited to:
- 1) Investigating the report or complaint as described below;
 - 2) with the agreement of the parties, attempting to resolve the report or complaint through an informal resolution process such as meeting or mediation between the alleged individual and a student conduct officer or a third party (mediation will not be used in cases involving allegations of sexual violence); or
 - 3) Determining that the facts of the complaint or report, even if true, would not constitute a violation of the conduct code or applicable policy.

The Title IX Coordinator may designate another individual (either from the College, or from outside of the College) to conduct or assist with an investigation or to manage an alternative dispute resolution process. Reports of student misconduct will be managed and investigated by a Deputy Title IX Coordinator likely from the Student Services Division. Complaints involving employees will be investigated by a Title IX Coordinator or designated Deputy Title IX Coordinator likely from the Human Resources office. All investigations will be conducted professionally, expeditiously, equitably, and confidentially (to the extent possible). MCC will provide the reporting party and responding party with equitable opportunities throughout the investigation and resolution process, including the opportunity to be accompanied by the advisor of their choice. The advisor is present only as a support person and does not participate or have a role in any part of the investigation or resolution process.

If outside investigators are utilized they shall have the training qualifications and experience, in the judgment of the Coordinator, to professionally facilitate the investigation. Anyone designated to address an allegation must adhere to the requirements of the conduct code and applicable policy and confer with the Title IX Coordinator about his/her process.

Upon receipt of a complaint, the Title IX Coordinator will confirm with the reporting party the receipt of the complaint, and will specify which deputy coordinator will be assigned to conduct the investigation. Generally, the Deputy Coordinator or designee interviews the reporting party and any relevant witnesses identified by the reporting party. Once sufficient information is gathered, the Deputy Coordinator or designee will then notify the identified individual (responding party) of the allegations. The Deputy Coordinator or designee will interview the charged individual and any witnesses deemed relevant.

Additional evidence may be sought from any relevant party or witness, including but not limited to, email communications, social media postings, text messages, phone records, etc. Parties are expected to cooperate and provide this information. Failure to cooperate with an investigation may result in separate disciplinary proceedings. Parties should be aware that as members of the

college community, their access to college resources has very limited privacy rights, and the College may obtain information through college's resources and informational technology system with or without the individual's cooperation.

Once the Deputy Coordinator or designee has gathered the information, he/she shall prepare a report for the review committee.

Notification to Responding party

If an investigation is conducted, the Title IX Deputy Coordinator or designee will notify the responding party. A notice of investigation which will include a description of the alleged misconduct, and the requirement to attend a meeting with the investigator. The notice may be sent to the student's college email address, to the mailing or permanent address appearing in the college's student information system to an address appearing in a police report or may be hand delivered. Notice to the student will be considered furnished on the date of hand-delivery, on the date emailed, or three days after the date the notice is placed in U.S. mail. At the meeting the responding party will have the opportunity to reply to the allegations. The reporting party and the responding party both have the right to present relevant information to the investigator, including identifying witnesses, to have a support person present during any conduct meetings, and to receive a copy of the investigator's report at the conclusion of the investigation and appropriate review, to the extent permitted by law.

If the responding party does not schedule or attend a conference by the date specified in the notice of investigation, or if the responding party schedules a meeting but does not attend or attends but does not participate, the investigator may complete the investigation based on the information obtained. The Title IX Coordinator or designee may also use relevant police investigation reports in the process.

If not already reviewed, the investigator or Title IX designee shall discuss campus support services available to the parties and will discuss with the reporting party whether s/he has the same classes and/or campus activities with the responding party, and will take interim steps as needed to protect the reporting party and the campus prior to the outcome of the investigation, including, but not limited to class moves, no-contact orders, interim suspension as s/he deems necessary and appropriate. The investigator or designee will discuss with the reporting party his/her options for obtaining criminal or civil protection or restraining orders and for reporting to law enforcement.

Leadership Notification

The President shall be notified when an investigation occurs.

Investigatory Report and Standard of Proof

At the conclusion of an investigation, the investigator shall prepare a written report that will include a statement of factual findings and a determination as to whether or not there was a violation of the Student Conduct Code or college policy. The standard of proof shall be a preponderance of the information/evidence or it is more likely true than not. The report shall be presented to the review committee.

Review Committee

The review committee shall consist of employees who have received appropriate training regarding this policy.

The review committee examines the investigative report to assess the thoroughness and fairness of the investigation and determine if the conclusions reached in the report are reasonable. The review committee may review any information contained in the investigation file, may consult with the investigator, or may recommend that further investigation or a new investigation be done by the same or another investigator. The review committee may not conduct its own investigation or hearing.

The Title IX Coordinator shall advise the reporting party and responding party in writing of the result of any investigation conducted under this process. A copy of the investigator's summary report as approved by the standing review committee and to the extent permitted by law shall be provided to the reporting party, the responding party, the Title IX Office and the President.

Retention of Documents

In all cases, the Title IX Office shall retain the investigator's report and final sanction decision for a minimum of four years or for as long as any administrative or legal action arising out of the complaint is pending.

All records reports and investigations relating to sexual misconduct or protected class discrimination or harassment shall be considered confidential and shall not be disclosed publicly except to the extent required by law.

Falsification

Any student who provides false information to any college official during the investigation or conduct process may be charged with violating the Student Code of Conduct.

Finding

After the investigation, the Title IX Deputy Coordinator or investigator shall render a finding based on the relevant evidence presented to the review committee utilizing a preponderance of the information/evidence standard, i.e. the facts complained of are more likely true than not.

Upon completion of the investigation, the Title IX Deputy Coordinator or designee is authorized to take the following actions:

1. Dismissal of the claim - The Title IX Deputy Coordinator or designee finds that no violation occurred and dismisses the complaint, giving written notice of said dismissal to each party involved.
2. Determination of Responsibility - The Title IX Deputy Coordinator or designee makes a finding of responsibility for any of the allegations and notifies the parties and appropriate administrative officers of the finding and may recommend actions to be taken. Both parties shall receive notification, in writing, which will include:
 - a. The result of any investigation that arose from an alleged violation.
 - b. Additional process information

If evidence supports a finding of responsibility, the written report of the action taken shall then be placed in the personnel record of the student or employee file. Sanctions will become a permanent part of a student record or employee file.

Appeals

Review of the decision

Either party may appeal the outcome of the matter. A review of the matter will be efficient and narrowly tailored. A party may seek review only on the following grounds:

1. To consider new information, sufficient to alter the decision, or other relevant facts not brought out in the original hearing, because such information was not known or knowable to the person appealing during the time of the hearing.
2. To allege a procedural error within the process that may have substantially impacted the fairness or outcome of the investigation.

Appeals must be submitted in writing to the Title IX Coordinator within 7 business days from the day the parties are notified about the outcome of the case. Upon receipt of an appeal the Title IX Coordinator will appoint an appellate review panel of 3 members from a pool of trained faculty/staff. The panel will review the materials within 15 days of receipt of the appeal. The panel will examine all documentation of the process and report to determine if there is a reasonable basis for changing the outcome. The panel will issue a written determination of the appeal, or may request that the Title IX Coordinator take appropriate steps in the appeal, which may include:

1. Affirm the original finding and sanction
2. Affirm the original finding but issue a new sanction based on the new information, which may be of greater or lesser severity
3. Remand the case back to the review committee to correct a procedural or factual defect

The panel's determinations are final. Both parties shall receive simultaneous written notice of the outcome of the appeal. Both parties shall receive simultaneous written notice of any change to the results that occurs prior to the time that such results become final; and when such results become final.

Potential student sanctions will be applied based upon the facts and circumstances of the case. Possible student sanctions may be found in the Student Code of Conduct but may include counseling and/or disciplinary action including but not limited to: reprimand, warning, no contact order, loss of privileges, suspension, probation, or dismissal from the college. In addition the College may choose to withhold awarding a degree otherwise earned until the completion of the process set forth in this policy including the completion of all sanctions imposed, if any. Employee disciplinary action may include but not be limited to counseling, warning, final written warning, transfer to another area or position, demotion, and termination.

Violations of Law

An employee or student may be accountable for sexual misconduct under applicable local, state, and/or federal law, as well as under MCC policy. A criminal investigation may be conducted concurrently with the Title IX investigation. Disciplinary action by MCC may proceed while criminal proceedings are pending and will not be subject to challenge on the grounds that criminal charges involving the same incident have been dismissed or reduced.