

Procedure 3.29.0

Description: TITLE IX PROCEDURE

Middlesex College is compliant with **Title IX of the Education Amendments of 1972**

programs and activities. The sex discrimination prohibited by Title IX includes various forms of sexual harassment and sexual violence, including VAWA offenses, t

implement the requirements of Title IX and the regulations promulgated by the United States Department of Education on May 19, 2020, which define sexual harassment, address how the College must respond to reports of misconduct falling within that definition and require a specific grievance process that the College must follow.

This Policy sets forth the manner in which the College will deal with reported instances of Title IX sexual harassment, per the new regulations. Allegations of sexual harassment that do not come within the purview of the regulations, as well as other alleged misconduct, will be addressed under the Middlesex College Board of Trustees Policy and/or Procedures Manual, or the Code of Student Conduct

Policy Statement

Middlesex College will promptly respond in a manner that is not deliberately indifferent any time the College has actual knowledge of an allegation of sexual harassment prohibited under Title IX which occurred in a College education program or activity and was committed by a current College student, employee and/or third-party covered by this Policy.

Definitions

For purposes of this Policy only, the following Definitions apply:

means conduct on the basis of sex that constitutes one or more of the following:

1. An employee conditioning educational benefits on participation in unwelcome sexual conduct (*quid pro quo* harassment);
2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive **and** objectively offensive that it effectively denies a person equal or activity;
3. Sexual assault as defined in the Clery Act, **or** dating violence, domestic violence or stalking as defined in the Violence Against Women Act (VAWA).

Conduct that does not fit within any of the above categories cannot be pursued under the Title IX procedures, but may be pursued under the Code of Conduct.

Consent

act in which the participants are involved, and is assessed objectively from the viewpoint of a

reasonable per

- Consent must be clear, verbal, sober and affirmative;
- Consent must be obtained for each and every sexual activity to constitute effective consent;
- Consensual activity requires a mutual decision of both parties without any hint of force, threat, coercion, pressure, fraud, manipulation or fear of injury;
- Consent cannot be given if the victim is mentally or physically incapacitated due to alcohol and/or other drugs or due to a temporary or permanent mental or physical condition;
- Silence, passivity or the lack of active resistance is not consent;
- Previous sexual activity, either between the same parties or with other parties, does not equal current consent;
- Consent to one form of sexual activity does not equal consent to other forms of sexual activity;
- Consent can be withdrawn at any point.

Actual Knowledge the receipt of notice of sexual harassment or allegations of sexual harassment by the Title IX Coordinator or any College official who has the authority to institute corrective measures on behalf of the College.

Complainant constitute sexual harassment, irrespective of whether a formal complaint has been filed. The Complainant does not necessarily have to be the person who files the formal complaint.

Respondent that could constitute sexual harassment.

Educational Program or Activity in which the College exercises substantial control over both the Respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the College.

Formal Complaint the document alleging that sexual harassment occurred within an education program or activity and requesting initiation of the procedures necessary for investigating the allegation of sexual harassment. A Formal Complaint may only be filed by the Complainant or the Title IX Coordinator.

Advisor Complainant or the Respondent with support, guidance or advice, and conducts the cross-examination at any hearing.

Proceeding resolution of the formal complaint, including but not limited to, fact-finding investigations, formal or informal meetings and hearings.

Relevant Evidence/Questions

an allegation of sexual harassment more or less likely to be true. The following types of evidence and questions are deemed irrelevant at all stages of the process described herein:

submits a formal complaint expressing that she/he would like the College to investigate, or the Title IX Coordinator submits a formal complaint after having determined that an investigation is warranted. No disciplinary sanctions or other actions that are not supportive measures may be imposed against a Respondent without first following the grievance process.

Non-Title IX Offenses

When an allegation is made of sexual harassment that does not fit within the provisions of Title IX, or when an allegation is made of some other type of misconduct, the College may

Mandatory Reporters

Mandatory reporters are those employees who must report an incident of sexual harassment to the Title IX Coordinator or other College official with authority to implement supportive measures. The reporting employee must provide all relevant details about the alleged sexual harassment shared by the victim including the name of the victim and accused, any witnesses and other relevant facts, including the date, time and specific location of the alleged incident(s). This will ensure that alleged victims are provided with appropriate resources and supportive measures even if they decide they do not want to file a formal complaint.

The following employees or categories of employees are mandatory reporters of the College:

- Administrators
- Deans
- Coaches
- Directors
- Health Services
- Faculty
- Campus Police

In addition, all managers and supervisors are required to notify the Title IX Coordinator upon receipt of a report of alleged sexual harassment from an employee.

The following employees are considered officials with authority to implement supportive measures:

- Title IX Coordinator
- Vice President, Institutional Effectiveness, Planning, and Compliance
- Executive Director, Human Resources

The Respondent shall receive notice of the emergency removal specifying the threat of physical health and/or safety that compelled the removal decision. The Respondent shall have the immediate opportunity to challenge the removal by appealing, in writing, to the President, identifying the reasons why the threat is not valid and/or why emergency removal is not necessary. shall make a decision within five (5) days of receipt of the challenge.

Administrative Leave

The College may place an employee Respondent on administrative leave after a formal complaint has been filed and the grievance process has commenced in order to effectuate a temporary separation of the employee. Administrative leave is intended to be utilized in non

Notice of the allegations shall contain sufficient details known at the time including the identities of the parties, the conduct allegedly constituting sexual harassment and the date and location of the alleged incident, if known. The notice must include a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the end of the grievance process. In addition, the notice must inform the parties that they may have an advisor of their choice and that they may inspect and review evidence. The notice shall caution the parties that the College Code of Conduct prohibits knowingly making false statements or knowingly submitting false information during the grievance process. The notice must be provided with sufficient time for the parties to review and prepare a response before any initial interview.

Evidence

The investigator may gather any relevant evidence that is directly related to the allegations of the complaint, subject to the restrictions contained herein. The parties and witnesses have the option of submitting any evidence they deem relevant for consideration by the investigator.

inspect and review evidence begins. The investigator shall collect the evidence keeping in mind that the College has the burden of proving that a violation of Title IX has occurred by a preponderance of the evidence. The preponderance of the evidence standard requires proof that it is more likely than not that a violation occurred.

likely to be true. The following evidence is considered irrelevant at all stages of the proceeding:

voluntarily consents to its use in writing;
Information protected under a legally recognized privilege; and,

unless:

1. The evidence is offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; or,
2. The evidence relates to sexual behavior with respect to the Respondent and are offered to prove consent.

Once all the potential evidence has been gathered, both the Complainant and the Respondent, as well as any advisors, shall be given an opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the complaint, including evidence upon which the College does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence whether obtained from a party or other source. Notably, the evidence shared with the parties need only be directly related to the complaint and not necessarily relevant. Similarly, the investigator shall not be permitted to redact information that is not directly related to the allegations or that is otherwise barred from use, such as privileged information. If any redactions are made, a privilege log shall be created which will give the parties the option of challenging the basis for the redactions.

Each party and their advisors shall be provided a copy of all such evidence in electronic format or hard copy. The College, in its sole discretion, shall determine the format by which the evidence will be provided. However, prior to releasing the evidence, the parties and any advisors must sign an agreement confirming that they will not disseminate or copy any of the evidence for any purpose outside the Title IX grievance process. The evidence shall also be made available to the parties during any hearing for reference and for purposes of cross-examination.

The parties shall have ten (10) days to review the evidence and submit a written response which the investigator will consider before completing the investigation report. Each written response will be provided to the other parties and their advisors. A response submitted after ten (10) days will not be considered. In the event one or more of the written responses triggers the need for additional investigation, the investigator shall have the right to extend the investigation upon providing notice to the parties of the reason for the extension. If new evidence is discovered during an additional investigation, that new evidence shall be provided to the parties, who shall have a new opportunity to respond.

Investigation Report

At the conclusion of the investigation, the investigator shall prepare an investigative report that fairly summarizes the relevant evidence. Only relevant evidence must be included in the report. The report may include the procedural steps taken in the investigation process, the timeline of the investigation and summarize the relevant supporting documentation. The investigator is permitted to redact irrelevant information from the report if that information is contained in documents that are otherwise relevant.

individuals with relevant experience and special training. Panelists will not be from the department of either the Complainant or the Respondent. All panelists will receive training from experts in the field at least once a year on such subjects as impartiality, rape shield protections, issues of relevance, hearing decorum and hearing technology. The Complainant and Respondent

Certain individuals involved in the grievance process at issue cannot serve on the hearing panel including the Title IX Coordinator, the investigator or a party advisor. These individuals also cannot serve as the appeals officer in the same case, nor can anyone on the hearing panel serve as appeals officer.

Notice of Hearing

The Title IX Coordinator shall provide written notice of the hearing to the parties no less than ten (10) days prior to the hearing. The notice must include the allegations of the complaint, the time, date and location of the hearing, the name(s) of the decision-maker(s)/hearing panel, information on requesting any kind of accommodation, a copy of the hearing guidelines, a statement that each party is entitled to have an advisor of choice conduct cross-examination on their behalf, and a statement directing each party to provide the Title IX Coordinator with

The College will make and maintain an audio recording of the hearing for use of the decision-maker(s), for sanctioning and for purposes of appeal. The parties or their advisors may review the recording, but they will not be provided with a copy of the recording. In no case will cell phone or other recording devices be permitted in the hearing room unless approved by the decision-maker(s) in advance.

The decision-maker(s) may set reasonable time limits for any part of the hearing.

Cross-Examination

If no advisor is selected, or if the selected advisor does not attend the hearing, the College will provide the party with an advisor for the sole purpose of conducting cross-examination at no charge to the party.

List of the allegations;
Who performed the investigation;
Description of the procedural steps taken from the receipt of the formal complaint through the determination, including notifications, interviews, evidence-gathering methods and hearings;
A timeline of the process;
Findings of fact supporting the determination;
Conclusion regarding application of the Code of Conduct to the facts;
What evidence was reviewed and considered;
A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the Respondent, and whether remedies designed to restore or preserve equal access to
Complainant; and,
The procedures and permissible bases for appeal.

opportunity to appeal expires, or on the date that the College provides the parties with the written determination of the result of the appeal, if an appeal is filed.

The written determination shall be provided to the parties simultaneously via email, or other means which would allow for simultaneous receipt.

Sanctions

The decision-maker(s) will impose sanctions that are:

Fair and appropriate given the facts of the particular case;

Adequate to protect the safety of the campus community; and,
Reflective of the seriousness of the sexual harassment.

The decision-maker(s) will consider all relevant factors which include, but are not limited to, the nature of the conduct at issue, the circumstances accompanying the lack of consent, the prior disciplinary history, the safety of the College community and the sanctions imposed in similar cases.

The decision-maker(s) shall be the ultimate arbiter of what the appropriate sanction should be. In cases where the Respondent is a student, any one or more of the following sanctions may be imposed:

Reprimand or warning;
Disciplinary probation;
Suspension (limited time or indefinite);

Expulsion;
Revocation of degree;
Revocation of honors or awards;
Restricting access to College facilities or activities (including student activities and campus organizations);

in place;
Dismissal or restriction from College employment;
Changing Resp
Community service

In addition to any other sanction (except expulsion or revocation of degree), the College will require any student determined to be responsible for a violation of the Policy to receive appropriate education and/or training related to the violation at issue. The College may also recommend counseling or other support services for the student.

Where the Respondent is an employee, sanctions may include discipline up to and including termination of employment. However, the determination as to the appropriate sanction for employee Respondent must be consistent with the terms of any applicable collective bargaining agreements and College employment policies.

Ongoing Measures for Complainant

Regardless of the outcome of the hearing process, a Complainant may request ongoing or additional accommodations and the College will determine whether such measures are appropriate. Potential ongoing accommodations include:

Providing an escort for Complainant;
Changing the

Allowing the Complainant to withdraw from or retake a class without penalty;
Providing access to tutoring or other academic support, such as extra time to complete or re-take a class

Additional Responses

The College may also determine that additional measures are appropriate to respond to the effects of the incident on the College community. Additional responses for the benefit of the College community may include:

Increased monitoring, supervision or security at locations or activities where the misconduct occurred;
Additional training and educational materials for students and employees;
-based misconduct

Appeals

Either party may appeal the determination of the decision-maker(s) by filing an appeal with the Appellate Officer, which shall be the Vice President for Institutional Effectiveness, Planning and Compliance, within five (5) business days of receipt of the written determination.

denied the appealing party a fair hearing, i.e., actually affected the outcome. Likewise, when the appealing party claims a conflict of interest or bias, the

be any investigation and/or hearing on a matter that has been approved for informal resolution.

receipt of the appeal. The Vice President for Institutional Effectiveness, Planning and Compliance may not serve as investigator or decision-maker in the same matter.

Consolidation of Complaints

The College may, but is not required to, consolidate formal complaints alleging sexual harassment against more than one Respondent, or by more than one Complainant, or when the Respondent files a cross-complaint against the Complainant, where the allegations arise out of the same facts or parties.

Conflict of Interest or Bias

Any individual with a role in the grievance process must be free from any conflict of interest or bias against a party, or particular class of parties, in the grievance process. This includes the Title IX Coordinator, investigators, decision-makers and facilitators, among others. If a Complainant or Respondent believes that an individual directly involved in the grievance process has a conflict of interest or bias, they may make a written request to the Title IX Coordinator that the individual not participate in the process. The request shall set forth the basis of the conflict of interest or bias and must be submitted promptly after learning of the bias exists, reasonable steps shall be taken to eliminate the conflict of interest or bias, or minimize it to the extent that it will have no effect on the ultimate outcome of the proceedings.

Training

The Title IX Coordinator, any person facilitating an informal resolution process and any investigator(s) and decision-maker(s) shall receive (annual) training on the definition of sexual investigation, grievance process, hearings, appeals and informal resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest and bias. In addition, any decision-makers must receive training on any technology to be used at a live hearing, rape shield protections and on issues of relevance of questions and evidence and in creating an investigative report.

Records Disclosure

Disciplinary proceedings conducted by the College are subject to the Family Educational Records and Privacy Act (FERPA), a federal law governing the privacy of student information. FERPA generally limits disclosure of student information outside the College without the

investigation may be subpoenaed by law enforcement authorities as part of a parallel investigation into the same conduct, or required to be produced through other compulsory legal

process. Likewise, the College is required, under Title IX, to inform the Complainant whether or not it found that sexual violence occurred, any individual remedies offered or provided to the Complainant or any sanctions imposed on the Respondent that directly relate to the Complainant, and other steps the College has taken to eliminate the hostile environment caused by actions, and to prevent recurrence.

Amendments

The College may amend this Policy as it deems necessary. Nothing in this Policy shall affect the inherent authority of the College to take such actions as it finds appropriate to further the educational mission or to protect the safety and security of the College community.