



Policy Number and Title:	500.201 Title IX Sexual Harassment Policy		
Approval Authority:	BMCC Board of Regents	Date Effective:	08/14/2020
Responsible Office:	BMCC Title IX Office	Responsible Office Contact:	Title IX Officer

1. POLICY STATEMENT/REASON FOR POLICY

This revised policy has been adopted to comply with the revised Title IX laws and regulations. This policy governs Bay Mills Community College's responses to complaints of Title IX defined Sexual Harassment in accordance with the US Department of Education regulations (34 C.F.R. Sec. 106 et seq.).

2. ENTITIES AFFECTED BY THIS POLICY

All BMCC Departments, Employees, Students and Third Parties.

3. WHO SHOULD READ THIS POLICY

All BMCC Departments, Employees, Students and Third Parties.

4. WEB SITE ADDRESS FOR THIS POLICY

-This policy can be found at:

<http://www.BMCC.edu/about-BMCC/governance-administration/college-policies>

5. FORMS/INSTRUCTIONS

No forms required.

6. HISTORY

-Amended: 08/14/2020; Interim Approval by the BMCC President on 08/14/2020;

Approved by the BMCC Board of Regents on 08/18/2020

-Next Review Date: 08/14/2023

-BMCC reserves the right to revise its policies at any time.

7. THE POLICY



**BAY MILLS COMMUNITY COLLEGE
TITLE IX SEXUAL HARASSMENT POLICY**

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I. INTRODUCTION: NOTICE OF NON-DISCRIMINATION AND INSTITUTIONAL VALUES

- A. NOTICE OF NON-DISCRIMINATION: The Bay Mills Community College (BMCC) and its Board of Regents is committed to providing a non-discriminatory and harassment-free educational and working environment for all members of the Bay Mills Community College, including students, faculty, administrators, staff, and visitors. It is the policy of Bay Mills Community College that no person shall be discriminated against, excluded from participation in, denied the benefits of or otherwise be subjected to discrimination, including harassment, in employment, in admissions, in education, or in any program or activity for which BMCC is responsible, on the basis of race, color, national origin, ancestry, gender, gender identification, sex, sexual orientation, disability, age, religion, medical condition, veteran status, marital status or any other characteristic protected by institutional policy or tribal or federal law.
- B. Bay Mills Community College, as a recipient of federal funds, is required to comply with Title IX of the Higher Education Amendments of 1972, 20 U.S.C. §1681 et seq. ("Title IX"), which prohibits discrimination on the basis of sex in educational programs or activities. Bay Mills Community College does not discriminate on the basis of sex or gender in its educational programs or activities, including in the context of admissions and employment.
- C. The Bay Mills Community College has appointed a Title IX Coordinator who will address all complaints pertaining to discrimination of any sort. All Bay Mills Community College staff and students are strongly encouraged to report information regarding any incident of sexual discrimination, sexual harassment, sexual violence, stalking or intimate partner violence directly to the BMCC Title IX Coordinator. The following person has been designated to address complaints regarding all matters of discrimination:

BMCC Title IX Coordinator

Holly Powless
Bay Mills Community College
Room 256-Michael C. Parish Administration Building
12214 W. Lakeshore Drive
Brimley, MI 49715
(906) 248-8430 hpowless@bmcc.edu

- D. For the interim period, the College President has approved this policy and the College will be operating under this policy pending formal approval by the BMCC Board of Regents. The Board of Regents formally approved this policy on September 18, 2020.

II. SCOPE OF POLICY

- A. This policy has been adopted to comply with Title IX laws and regulations. This policy governs BMCC's responses to complaints of Title IX defined Sexual Harassment in accordance with the US Department of Education regulations (34 C.F.R. Sec. 106 et seq.).
- B. This policy applies to all persons associated with the Bay Mills Community College community, including students, employees, and third parties who are engaged in any college program or activity, or who are otherwise interacting with BMCC, including but not limited to: volunteers, vendors, contractors, visitors and guests. Any individual who is found responsible of violating this policy may face disciplinary sanctions up to and including expulsion from BMCC or termination of employment.
- C. This policy is intended to protect individuals who have been affected by sexual discrimination, sexual harassment, sexual violence, stalking or intimate partner violence, whether as a Complainant or a Respondent and to provide fair and equitable due process for the investigation and resolution of such reports.
- D. Title IX applies to persons in the United States in an institution's education program or activities (including employment). This Title IX Sexual Harassment Policy applies when:
 - 1. BMCC has actual knowledge of sexual harassment as defined by this policy.
 - 2. The sexual harassment occurred within BMCC's Education Programs or Activities.
 - 3. The sexual harassment is against a person in the United States.
 - 4. At the time of filing a Formal Complaint, a Complainant must be participating in, or attempting to participate in a BMCC Education Program or Activity with which the formal complaint is filed.
- E. Misconduct complaints that do not meet the definition of Title IX Sexual Harassment, under this policy, may be subject to other College policies, including but not limited to: the 400.400 Student Handbook provisions; the 300.808 BMCC Personnel Manual provisions; and, the 500.105 Code of Conduct for Visitors, Volunteers, and Guests.
- F. A Complainant is encouraged to report misconduct regardless of where the incident occurred, or who committed it. Even if BMCC does not have jurisdiction over the Respondent, BMCC will nonetheless take prompt action to provide for the safety and well-being of the Complainant and the broader campus community under this and other college policies.

III. DEFINITIONS

For purposes of this policy, the following definitions shall apply:

- A. **“Actual Knowledge”** means notice of Sexual Harassment, or allegations of sexual harassment to BMCC’s Title IX Coordinator or any BMCC official who has authority to institute corrective measures on behalf of BMCC. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge.
- B. **“Advisor”** means an individual who conducts cross-examination on behalf of a party, and who may also accompany the party to meetings in the grievance process and otherwise participate in the live hearing, among other things. An advisor may be, but is not required to be, an attorney.
- C. **“Appellate Officer”** are individuals designated by authorized BMCC Administrative personnel to review and render decisions on appeals under this policy.
- D. **“BMCC Title IX Designated Officials”** are personnel authorized by BMCC to receive notice of Title IX Sexual Harassment, and to institute corrective measures.
- E. **“College Authorities”** are designated BMCC Administrative personnel who are authorized by the BMCC Board of Regents to institute corrective measures, responsive actions, and disciplinary sanctions.
- F. **“Complainant”** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment. A parent of a minor may file a complaint on behalf of a minor child who is attending BMCC as a student.
- G. **“Education Program or Activity”** includes locations, events, or circumstances over which BMCC 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 BMCC.
- H. **“Formal Complaint”** means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that BMCC investigate the allegation of sexual harassment.
- I. **“Hearing Decision Maker(s)”** means individuals designated by College Authorities to conduct a formal grievance process.
- J. **“Party”** refers to a Complainant or Respondent.
- K. **“Report”** is a disclosure of information by any person to the Title IX Coordinator or a BMCC Title IX Designated Official that includes allegations that may be covered by this policy.
- L. **“Respondent”** means a person who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- M. **“Retaliation”** is intimidating, threatening, coercing, or discriminating against any person for the purpose of interfering with any right or privilege secured by Title IX or this policy because the person made a report or complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this policy.
- N. **“Sexual Harassment,”** for the purposes of this policy, means conduct on the basis of sex that constitutes one or more of the following:
 - 1. **Quid pro quo sexual harassment:** When a BMCC employee conditions the provision of a college aid, benefit, or service on an individual’s participation in unwelcome sexual conduct; or,

2. **Unwelcome conduct** determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to a BMCC Education Program or Activity; or,
3. **Sexual assault** as defined in the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act,” specifically 20 U.S.C. 1092(f)(6)(A)(v)). Sexual assault means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation including:
 - a. **Rape**, defined as the carnal knowledge of a person, without the consent of the person, including instances where the person is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity;
 - b. **Sodomy** is oral or anal sexual intercourse with another person, without the consent of the person, including instances where the person is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity;
 - c. **Sexual Assault with An Object**, defined as the use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the person, including instances where the person is incapable of giving consent because of his/her youth or because of age or because of temporary or permanent mental or physical incapacity;
 - d. **Fondling**, defined as the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the person, including instances where the victim is incapable of giving consent because of his/her youth or because of age or because of temporary or permanent mental or physical incapacity;
 - e. **Incest**, defined as nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law;
 - f. **Statutory Rape**, defined as nonforcible sexual intercourse with a person who is under the statutory age of consent.
4. **Dating violence** as defined in Violence Against Women Act (“VAWA, specifically 34 U.S.C. 12291(a)(10)). Dating violence means violence committed by a person (i) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (ii) where the existence of such a relationship shall be determined based on the consideration of the following factors: the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.
5. **Domestic violence** as defined in VAWA (34 U.S.C. 12291(a)(8)). Domestic violence includes 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 cohabitation 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, or by any other person against an adult or youth victim who is protected from that person’s act under the domestic or family laws of the jurisdiction.

6. **Stalking** as defined in VAWA (34 U.S.C. 12291(a)(30)). Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to (i) fear for their own safety or the safety of others; or, (ii) suffer substantial emotional distress.
- O. **Supportive Measures** means 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. Such measures are designed to restore or preserve equal access to the Education Program or Activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the educational environment or to deter Sexual Harassment. Supportive measures may include counseling, extensions of deadlines or other course related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. BMCC shall maintain as confidential any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of BMCC to provide supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures.

IV. PROHIBITED CONDUCT

BMCC prohibits all forms of Sexual Harassment and will promptly and equitably address allegations of Title IX defined Sexual Harassment when the harassment occurs in BMCC's Education Programs or Activities in the United States.

V. RESOURCES AND RIGHTS FOR BOTH PARTIES

A. COMPLAINANT OPTIONS

There are a number of college resources and processes available to complainants, including:

1. Confidential personal support and advocacy resources for complainants, whether or not the grievance or informal problem-solving processes are initiated.
2. Supportive measures, whether or not the grievance or informal problem-solving processes are initiated.
3. The grievance process. A complainant may file a formal complaint to request the grievance process. A complainant files a formal complaint by submitting a document to the BMCC Title IX office that: 1) alleges that an individual engaged in prohibited conduct toward the complainant, and 2) requests that BMCC investigate the allegation of prohibited conduct. The document must contain the complainant's physical or digital signature or otherwise indicate that the complainant is the individual filing the formal complaint. The formal complaint may be filed with the BMCC Title IX office in person, by mail, or by e-mail.
4. Informal problem-solving processes. A complainant may request informal problem-solving processes by contacting the BMCC Title IX office.
5. Consultations with the BMCC Title IX office. A complainant may contact the BMCC Title IX office to learn more about these options, with or without sharing information about their experience of prohibited conduct or making a formal complaint.

B. SUPPORTIVE MEASURES FOR BOTH PARTIES

1. BMCC will provide supportive measures designed to restore or preserve equal access to BMCC's educational programs and activities, protect the safety of all parties or the educational environment, and/or deter prohibited conduct. Supportive measures are non-disciplinary, non-punitive individualized services provided to a party that do not unreasonably burden another party. They are offered to individuals as appropriate and reasonably available. Supportive measures may include the following:
 - a. Counseling and support services.
 - b. Academic or course-related adjustments, such as extensions of deadlines.
 - c. Modifications of work or class schedules.
 - d. Campus escort services.
 - e. Restrictions on contact between the parties.
 - f. Changes in work locations.
 - g. Leaves of absence.
 - h. Increased security and monitoring of certain areas of campus.
 - i. Assistance in making a report to law enforcement or obtaining a protective order.
2. Supportive measures may be implemented because an individual has requested them, the BMCC Title IX office has recommended them, or a department has identified a need for them. Supportive measures are available regardless of whether complainant files a formal complaint with the BMCC Title IX office or pursues any of the processes made available under this policy.
3. A party may seek these supportive measures by contacting the BMCC Title IX office, which is responsible for coordinating the effective implementation of supportive measures. Local victim-survivor advocacy offices may also be able to assist complainants in requesting supportive measures from the Title IX office.
4. The BMCC Title IX office will consult departments or individuals with the ability to provide the requested accommodations to determine which accommodations and protective measures to take depending on the circumstances.
5. BMCC will maintain the confidentiality of any supportive measures to the maximum extent possible.
6. The BMCC Title IX office will document and maintain records that it has taken reasonable measures designed to restore or preserve equal access to BMCC's education program or activity where appropriate and will maintain records of any supportive measures taken.

C. PRIVACY AND CONFIDENTIALITY

1. BMCC is committed to protecting the privacy of all individuals involved in an informal problem-solving process or grievance process under this policy to the greatest extent legally permissible. To carry out an informal problem-solving process or grievance process and/or to otherwise comply with legal obligations, it is often necessary for BMCC to share the identities of parties and/or witnesses, with the parties and other participants in the process. The identities of these individuals and the information provided during these processes also may be included in an investigation report or other document relating to the case, which may be provided to BMCC administrators and others as appropriate.

2. BMCC will keep private the identity of the parties, witnesses, and third-party reporters in cases involving Title IX based prohibited conduct except when necessary to carry out an informal problem-solving process or grievance process or otherwise comply with legal obligations.
3. BMCC does not restrict the ability of the parties to discuss allegations that have been reported or to gather and present relevant evidence. At the same time, BMCC and participants in the grievance process have a compelling interest in protecting the integrity of the grievance process, protecting the privacy of the parties and witnesses, and protecting parties and witnesses from harassment, intimidation, or retaliation during a grievance process. To further these goals, witnesses and parties are encouraged to limit their sharing of information about a matter (including the allegations, the identities of the parties and witnesses, and the questions asked in interviews) while the grievance process is ongoing.

Parties and witnesses are also cautioned not to discuss the allegations in a manner that constitutes retaliation or unlawful conduct. Further, parties and their advisors are not permitted to disseminate the evidence provided to them for the case.

D. AMNESTY

To facilitate reporting and thorough investigations of prohibited conduct, individuals who provide information about possible prohibited conduct violations to BMCC, and individuals who participate in an informal problem-solving or grievance process under this policy, will not be disciplined by BMCC for violations of BMCC's prohibition on the personal use of drugs or alcohol, when such a violation occurred in connection with a possible prohibited conduct violation and was discovered as a result of a prohibited conduct report. Moreover, BMCC may offer leniency with respect to other violations that emerge as a result of a prohibited conduct report, depending on the circumstances involved.

VI. REPORTING AND OTHER OBLIGATIONS RELATED TO PROHIBITED CONDUCT

In order to foster an environment free of prohibited conduct, all college community members are encouraged to take reasonable prudent actions to prevent, stop, and report all acts of prohibited conduct. In addition, college members have the following reporting and other obligations related to possible prohibited conduct.

A. REPORTING OF PROHIBITED CONDUCT DIRECTED AT STUDENTS

College employees must promptly contact the campus Title IX office when in the course of performing their employment duties they learn about any form of prohibited conduct directed at students that may have:

- Occurred on college property.
- Occurred during a college employment or education program or activity.
- Been directed at a current student at the time they were a student.
- Been committed by a current BMCC member at the time they were a BMCC member.

B. REPORTING OF PROHIBITED CONDUCT DIRECTED AT EMPLOYEES OR THIRD PARTIES

College employees must promptly contact the BMCC Title IX office when in the course of performing their employment duties they learn about any sexual harassment directed at College employees or third parties that may have:

- Occurred on college property.
- Occurred during a college employment or education program or activity.
- Been directed at a current college employee at the time they were a college employee.
- Been directed at a third party at the time they were engaged in any college activity, or program, or were otherwise interacting with BMCC as volunteers, contractors, vendors, visitors, or guests.
- Been committed by a current BMCC member at the time they were a BMCC member.

C. INFORMATION THAT MUST BE REPORTED TO THE BMCC TITLE IX OFFICE

College employees who learn about possible prohibited conduct are not required to solicit additional information about the prohibited conduct or the individuals involved. However, to the extent known to them, College employees who learn about prohibited conduct must report the following information to the BMCC Title IX office:

- The names of the complainant(s), respondent(s), and possible witnesses.
- The date, time, and location of the possible prohibited conduct.
- Other relevant details about the possible prohibited conduct.

D. EMPLOYEES WHO ARE EXEMPT FROM THESE REPORTING REQUIREMENTS

The following College employees are exempt from the requirement to report prohibited conduct to the BMCC Title IX office:

- Counselors, psychologists, and others with a professional license requiring confidentiality, and their supervisors, when they learn about prohibited conduct in the course of their professional responsibilities.
- Employees who are prohibited by HIPAA from fulfilling this reporting requirement.
- An Advisor to a party when they learn about prohibited conduct that is directly related to the case in which they are serving as an advisor, or from the party who they are serving as an advisor to, or in the course of their advising.
- Victim-survivor advocacy office employees and volunteers when they learn about prohibited conduct in the course of their advocacy work.

E. ADDITIONAL OBLIGATIONS FOR SUPERVISORS AND HUMAN RESOURCES REPRESENTATIVES

Supervisors and human resources (HR) employees may learn about possible prohibited conduct in a variety of ways, including when:

- They observe or overhear prohibited conduct.
- They receive a report of prohibited conduct, even when an individual does not identify the concerns as “prohibited conduct.”

- They receive any other information that prohibited conduct may have occurred, regardless of where the information comes from and even if the supervisor is unsure that any prohibited conduct actually occurred.

Supervisors and human resources employees who learn about possible prohibited conduct have additional obligations. First, supervisors and human resources employees who learn about possible prohibited conduct, including sexual harassment directed at employees, must promptly contact the BMCC Title IX office to report information about the possible prohibited conduct and to report any responsive action that has been taken.

Second, supervisors and human resources employees who learn about possible prohibited conduct must take prompt and effective responsive action. In some cases, a supervisor's or human resources employee's obligation to take prompt and responsive action will be satisfied by notifying the BMCC Title IX office. In other cases, it will be appropriate for supervisors and HR employees to take additional responsive action after consulting with the BMCC Title IX office. The particular response that a supervisor or HR employee should take will depend on the circumstances.

The following is a list of examples of responsive actions that may be appropriate for a supervisor or HR employee to take in certain cases:

- Providing supportive measures to a complainant or respondent.
- Making non-retaliatory employment changes that remove any continued impact on a complainant.
- Conducting preliminary inquiries to determine whether others have reported possible prohibited conduct by a particular respondent.
- Discussing the prohibited conduct concerns with the respondent and setting expectations for future conduct.
- Providing coaching and training on acceptable workplace conduct.
- Monitoring to prevent the occurrence of future conduct.

In all cases, supervisors and human resource employees must document the responsive actions taken and provide this information to the BMCC Title IX office.

VII. BMCC TITLE IX OFFICE RESPONSE(S) TO ALLEGED PROHIBITED CONDUCT

A. INFORMATION PROVIDED TO COMPLAINANTS

When the BMCC Title IX office learns about possible prohibited conduct, it will promptly contact the complainant to:

1. Provide information about supportive measures, including information about:
 - a. Supportive measures and resources within BMCC and in the community that are available with or without the filing of a formal complaint.
 - b. How to request supportive measures, including changes to academic, transportation, and working situations or protective measures.
 - c. BMCC's services related to no-contact orders, orders for protection, or similar lawful orders.
 - d. How BMCC will maintain the confidentiality of supportive measures provided to the complainant.
 - e. An invitation to the complainant to discuss supportive measures and share their wishes with respect to supportive measures with the BMCC Title IX office.

2. Provide information about the various processes offered by BMCC to address prohibited conduct.
3. Explain the process for filing a formal complaint or requesting an informal problem-solving process.
4. Provide information about how BMCC will complete publicly available record keeping, including Clery Act reporting and disclosures, without the inclusion of personally identifying information about the complainant.
5. Provide written notification about the importance of preserving evidence that may assist in a legal or campus disciplinary proceeding or may be helpful in obtaining a protective order.
6. Provide information about the complainant's right to seek medical treatment, as appropriate.
7. Provide written information to the complainant about their right to contact law enforcement, to decline to contact law enforcement; to be assisted by campus representative in contacting law enforcement, and to seek a protective order, as appropriate.
8. When a complainant does not respond to the communication from the BMCC Title IX office providing the information described above, the BMCC Title IX office will generally presume that the complainant does not want to initiate a grievance process or an informal problem-solving process.

B. BMCC TITLE IX OFFICE DETERMINATION ABOUT FURTHER RESPONSIVE ACTION

In addition to contacting a complainant upon learning about possible prohibited conduct, the BMCC Title IX office will take one of the following three actions.

1. Initiate a grievance process.

The BMCC Title IX office will initiate a grievance process when the complainant has filed a formal complaint requesting that BMCC investigate alleged prohibited conduct or when the Title IX Coordinator has signed a formal complaint.

- a. In cases involving a student respondent, the Title IX Coordinator will sign a formal complaint when an investigation is needed to comply with legal anti-discrimination requirements or when campus safety is threatened. In determining whether campus safety is threatened, the Title IX coordinator will consider the following factors: whether the respondent is alleged to have used a weapon or force while committing the prohibited conduct and whether the respondent has been alleged or found to have committed prohibited conduct against other complainant(s).
- b. In cases involving an employee or third-party respondent, the Title IX Coordinator will sign a formal complaint when: 1) an investigation is needed to comply with legal anti-discrimination requirements; 2) campus safety is threatened; or 3) an investigation is otherwise deemed to be the most appropriate and effective response.

2. Initiate an informal problem-solving process.

The BMCC Title IX office may initiate an informal problem-solving process to address alleged concerns and prevent prohibited conduct in cases where no formal complaint is filed or signed. For example, an informal problem-solving process may be appropriate

in cases: 1) with an anonymous complaint; 2) where the alleged conduct does not rise to the level of prohibited conduct; 3) where the complainant does not want to initiate a grievance process and an informal problem-solving process may effectively deter future prohibited conduct; or, 4) where the alleged conduct is likely covered by academic freedom or free speech protections.

3. Take no further action beyond offering supportive measures.

In certain cases where a complainant does not want an informal problem-solving or grievance process, or when the BMCC Title IX office does not have sufficient information to effectively initiate such a process, the BMCC Title IX office may decide not to take any action beyond offering supportive services to the complainant.

VIII. INFORMAL PROBLEM-SOLVING PROCESS

The BMCC Title IX office may initiate an informal problem-solving process when a grievance process has not been initiated or has been dismissed. In an informal problem-solving process, the BMCC Title IX office does not determine whether a respondent has violated college policy. However, the BMCC Title IX office may provide resources to help address the concerns raised and make recommendations for responsive action, including actions aimed at preventing misconduct from occurring. For example, informal problem-solving processes may include:

- Gathering additional information about the alleged prohibited conduct to determine how to most effectively respond to the alleged prohibited conduct or to provide relevant information to the individuals involved.
- Notifying a respondent about the concerns raised and about any reported impact of the concerns on the complainant or campus community.
- Providing education or coaching to a respondent or complainant.
- Providing recommendations that prevent further concerns from arising to an appropriate individual who oversees a respondent or complainant.
- Establishing a plan to monitor for future misconduct.

IX. THE GRIEVANCE PROCESS

The BMCC Title IX office will initiate the grievance process when a formal complaint alleging prohibited conduct in violation of this policy is filed by a complainant or signed by the Title IX Coordinator.

A. STANDARD OF PROOF

BMCC's grievance process applies the preponderance of the evidence standard when determining whether this policy has been violated. "Preponderance of the evidence" means that it is more likely than not that a Respondent is responsible for violating this Title IX Sexual Harassment Policy.

B. ELEMENTS OF THE GRIEVANCE PROCESS

The grievance process includes the following key elements:

1. The Title IX Coordinator, Title IX Investigator(s), decision makers and individuals designated to facilitate informal resolution processes who 1) do not have a conflict of interest or bias for or against complainants or respondents generally or individual complainants or respondents specifically; and, 2) are trained in accordance with this policy and applicable laws.

2. A burden of proof that rests on BMCC.
3. A burden of gathering evidence sufficient to reach a determination on responsibility and disciplinary sanctions, if any, that rests on BMCC.
4. An equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
5. A presumption that a respondent is not responsible for the alleged prohibited conduct until a determination on responsibility and disciplinary sanctions, if any, is made at the conclusion of the grievance process.
6. An objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence.
 - a. Relevant evidence is information pertinent to proving whether facts material to the allegations are more or less likely to be true.
 - b. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not considered relevant, unless such questions or evidence: 1) are offered to prove that someone other than the respondent committed the conduct alleged by the complainant; or 2) concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
7. No consideration of information protected under a legally recognized privilege, or questions seeking disclosure of this information, unless that party provides voluntary, written consent.
8. No access to or consideration of a party's records that were made or maintained by a physician, psychiatrist, psychologist, or other professional in connection with the provisions of treatment to the party, unless that party provides voluntary, written consent.
9. Credibility determinations, where applicable, that are not based on an individual's status as a complainant, respondent, or witness.

C. PARTY AND WITNESS PARTICIPATION IN THE GRIEVANCE PROCESS

1. Parties will be provided with written notice of the date, time, location, participants, and purpose of all meetings during the grievance process at which the party is expected or invited, with sufficient time for the party to prepare to participate.
2. Parties and witnesses are not required to participate in a grievance process under this policy. When a party or witness refuses to provide relevant information during a grievance process, the grievance process may proceed. However, a determination on responsibility and disciplinary sanctions, if any, will be based only on the information available.
3. Individuals who knowingly or intentionally file a false formal complaint or provide false or misleading information during a grievance process may be subject to disciplinary action up to and including termination of employment or expulsion. Disciplinary action is not warranted where an individual provides information in good faith, even if the information is ultimately not substantiated. An individual provides information in good faith when that individual reasonably believes that the information they have provided is accurate.
4. Concerns that an individual has knowingly or intentionally provided false or misleading information will be addressed by the following offices: 1) for concerns that students allegedly engaged in this misconduct, the campus office responsible for investigating and adjudicating potential Student Conduct Code violations other than prohibited

misconduct covered in this policy; 2) for concerns that an employee allegedly engaged in this misconduct, the employee's supervisor or human resources employees; and 3) for concerns that third parties allegedly engaged in this misconduct, BMCC official responsible for retaining or overseeing the third party.

D. ADVISOR PARTICIPATION IN THE GRIEVANCE PROCESS

A party may be accompanied to meetings and hearings in the grievance process by an advisor of their choice and a support person who cannot be a fact witness in the case. In limited circumstances, other individuals may be permitted to attend these meetings to support a party for good reason, such as to accommodate a disability, at the discretion of BMCC member conducting the meeting. When a party does not have an advisor present at a live hearing, BMCC will provide an advisor to conduct cross-examination on behalf of that party. A party may choose to have this advisor fulfill any and all additional functions permitted for advisors.

E. REMOVAL OF A RESPONDENT FROM THEIR COLLEGE ROLE DURING A GRIEVANCE PROCESS

1. **Students Respondents.** A student respondent may be removed from their College role as an interim measure during a grievance process in two circumstances.

First, BMCC may undertake emergency removal of a student respondent for reasons arising from the alleged prohibited conduct when BMCC 1) undertakes an individualized safety and risk analysis; 2) concludes that there is an immediate threat to the physical health or safety of any student or other individual arising from the alleged prohibited conduct; and, 3) provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

Second, BMCC may impose an interim disciplinary suspension on a student respondent in accordance with the BMCC Student Conduct Code for reasons not arising from the alleged prohibited conduct.

2. **Employee Respondents.** Designated BMCC Administrative personnel, at their discretion, may take interim measures such as changing a respondent's work responsibilities or work location or placing them on administrative paid or unpaid leave during the grievance process. Such action may be appropriate where there is a legitimate concern that without interim measures: 1) the respondent will engage in prohibited conduct or retaliation while the grievance process is ongoing; or 2) the respondent would be unduly disruptive to the College community, its members, or to College activities or programs.
3. **Non-student and non-employee respondents.** College members who are neither students or employees may be removed from their College role or a College program as an interim measure during a grievance process at the discretion of the BMCC Administration.

F. CONSOLIDATION OF FORMAL COMPLAINTS

Formal complaints may be consolidated when the allegations arise out of the same facts or circumstances and there are: 1) allegations by one complainant against more than one respondent; 2) allegations by more than one complainant against one or more respondents;

or 3) cross-complaints.

G. DECISION ABOUT THE DESIGNATION OF PROHIBITED CONDUCT

Upon receipt of a formal complaint that alleges prohibited conduct in violation of this policy, the BMCC Title IX office will initiate a grievance process. Once the BMCC Title IX office initiates a grievance process, it will provide notice to the parties in writing of:

- The decision about whether to designate the alleged prohibited conduct as Title IX based prohibited conduct.
- The reasons for this decision.
- The parties' right to appeal this decision.

The BMCC Title IX office will not initiate a grievance process when the alleged conduct, if substantiated, would not constitute prohibited conduct as defined by this policy. In such cases, the BMCC Title IX office will notify the parties in writing of this decision and of the parties' right to appeal this decision to a designated impartial appellate officer.

H. DISMISSAL OF A FORMAL COMPLAINT

1. The BMCC Title IX office must dismiss a formal complaint, after investigation of the allegations in the complaint, with regard the alleged prohibited conduct under Title IX when:
 - a. If the conduct alleged in the formal complaint would not constitute sexual harassment, as defined under this policy, even if proved.
 - b. The conduct did not occur in the College's education program or activity.
 - c. The conduct did not occur against a person in the United States.
2. The BMCC Title IX office may dismiss a formal complaint or any allegations therein during the grievance process when:
 - d. A complainant notifies the Title IX Coordinator in writing that they would like to withdraw the formal complaint or any allegations therein.
 - e. A respondent is no longer enrolled in, or employed by BMCC.
 - f. Specific circumstances prevent the gathering of evidence sufficient to reach a determination on responsibility.
2. When dismissing a complaint, the BMCC Title IX office will notify the parties in writing of:
 - a. The decision to dismiss.
 - b. The reasons for the dismissal.
 - c. The parties' right to appeal the dismissal to an impartial appellate officer.

I. APPEALS OF DISMISSAL OF FORMAL COMPLAINTS AND OF DECISIONS ABOUT THE DESIGNATION OF PROHIBITED CONDUCT

1. Any party may appeal the BMCC Title IX office's written decision to: 1) designate the alleged conduct as Title IX based prohibited conduct or its decision to not make that designation; 2) not initiate a grievance process, despite a complainant's request for a grievance process, because the alleged conduct, if substantiated, would not constitute prohibited conduct under the policy; or 3) dismiss a formal complaint.

2. Appeals must be submitted to the Appellate Officer in writing within ten business days of receipt of the BMCC Title IX's office's written decision. Appeals received after ten business days will be denied. Decisions that are not appealed within ten business days are final. When a timely appeal is received, the other party will be sent a copy of the appeal and provided an opportunity to respond. A response to an appeal must be submitted in writing within ten business days from the party's receipt of the appeal.
3. Appeals are not intended to allow for a second review of the same information provided to the BMCC Title IX office, and the appellate officer will not substitute their judgment for that of the BMCC Title IX office. Appeals are limited to the following grounds:
 - a. Procedural irregularity that affected the outcome of the matter.
 - b. New evidence that was not reasonably available at the time the determination or dismissal was made that could affect the outcome of the matter.
 - c. A decision that was not based on substantial information. Substantial information means relevant information that a reasonable person might accept as adequate to support a conclusion.
 - d. The Title IX Coordinator, investigator(s), or decision maker(s) had a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent that affected the outcome of the matter.
4. In most cases, the appellate review is limited to review of the written decision and the appeal and response documents submitted by the parties. However, the appellate officer may, at their discretion, request and review additional information from the BMCC Title IX office.
5. The appellate officer will provide a written decision on the appeal to the parties. The appellate officer may 1) affirm the decision; 2) overturn the decision; or 3) remand the case to remedy procedural errors or consider new evidence.
6. The appellate officer shall issue a decision within 15 calendar days of receipt of all appeal and response documents.

J. INFORMAL RESOLUTION PROCESS

1. BMCC may offer informal resolution processes to parties at any time after a formal complaint is filed and before a final determination on responsibility and on disciplinary sanctions is made. However, BMCC will not offer informal resolution processes to resolve allegations that an employee engaged in Title IX based prohibited conduct toward a student.
2. Before initiating an informal resolution process, BMCC will provide the parties with a written notice disclosing:
 - a. The allegations in the formal complaint.
 - b. The requirements of the informal resolution process.
 - c. The circumstances under which the informal resolution process precludes the parties from resuming the grievance process arising from the formal complaint.
 - d. The parties right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.
 - e. Any privacy-related and recordkeeping related consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

3. In addition, before initiating an informal resolution process, BMCC must obtain the parties' voluntary, written consent to the informal resolution process.

K. INVESTIGATION

1. General Principles

- a. Investigations into formal complaints will be conducted by the BMCC Title IX office. However, investigations into stalking and relationship violence of a non-sexual nature will be conducted:
 - i) for student respondents, by the campus office or official that investigates non-sexual Student Conduct Code complaints;
 - ii) for employee respondents, by a human resources employee or supervisor; and
 - iii) for other College members, by BMCC official who retains or oversees their participation in College programs or activities.
- b. If a prohibited conduct investigation reveals possible misconduct other than prohibited conduct under this policy, the BMCC Title IX office will forward this information to the campus office or supervisor responsible for investigating that possible misconduct. However, amnesty is provided for certain drug and alcohol related offenses that come to light during a prohibited conduct investigation.

2. Written notice to the parties

Upon receipt of a formal complaint that alleges prohibited conduct in violation of this policy, the BMCC Title IX office will provide written notice to the parties who are known. The written notice will provide the parties with sufficient time to prepare a response before any initial interview, and will include:

- a. Notice that a grievance process is being initiated.
- b. Information about the grievance process set forth in this policy.
- c. Notice of allegations of prohibited conduct, including the identities of the parties involved in the incident, if known, alleged prohibited conduct, and the date and location of the alleged prohibited conduct, the reasons for this decision, and the parties right to appeal this decision.
- d. Notice of the decisions on whether the reported conduct will be designated as Title IX prohibited conduct, the reasons for this decision, and the parties right to appeal this decision.
- e. A statement that the respondent is presumed not responsible for the alleged prohibited conduct and that a determination on responsibility and on disciplinary sanctions, if any, is made at the conclusion of the grievance process.
- f. Notice that the parties may be accompanied to meetings and hearings in the grievance process by: 1) an advisor of their choice who may be, but is not required to be, an attorney, and who may inspect and review evidence; and, 2) a support person who cannot be a fact witness in the case.
- g. Information about applicable supportive measures and advisor resources, and an opportunity to discuss them with the BMCC Title IX office.
- h. Notice that this policy prohibits knowingly or intentionally filing a false formal complaint or providing false or misleading information during a grievance process.

3. Investigation process

The nature and scope of an investigation will be determined based on the formal complaint and any additional information gathered during the investigation, and will include the following elements:

- a. Written notice to the parties.
- b. One or more requested interviews of a complainant, where the complainant will have the opportunity to describe the allegations giving rise to the formal complaint, provide evidence, and identify witnesses.
- c. One or more requested interviews of a respondent, where the respondent will have the opportunity to respond to the allegations, provide evidence, and identify witnesses.
- d. Gathering of other evidence, such as through witness interviews.
- e. An equal opportunity for the parties and their advisors to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaints as follows: Prior to completion of the investigation, the BMCC Title IX office will send to each party and the party's advisor, if any, the evidence for inspection and review. The parties are not permitted to photograph the evidence or disseminate the evidence to the public. The parties will be provided ten calendar days in which to submit a written response, which the BMCC Title IX office will consider prior to completion of the investigation.
- f. Provision of a final investigation report to each party, the party's advisor, if any, and to BMCC authority that fairly summarizes the relevant evidence, and a recommended determination on responsibility.
- g. The BMCC Title IX office will complete investigations within 90 business days. However, depending on the complexity of the investigation, the number of witnesses, the availability of evidence and other factors, some investigations may take additional time. When an investigation will not be completed within 90 business days, the BMCC Title IX office will notify the parties and provide the reason for the extended timeline in writing.

L. POST-INVESTIGATION INFORMAL RESOLUTION

Based on the final investigation report, the BMCC Title IX office may opt to provide the parties with a proposed informal resolution. If both parties agree in writing to the informal resolution, the grievance process ends. If either party does not agree to the informal resolution, the matter will proceed to a hearing.

This informal resolution process is not available to resolve formal complaints that an employee engaged in Title IX based prohibited conduct toward a student.

M. HEARING

1. Hearing

- a. If there is no informal resolution, the parties will be provided a live hearing. The hearing will be scheduled no earlier than ten calendar days after the parties receive the final investigation report and proposed informal resolution, if one is proposed. The parties will be permitted to submit a written response to the final investigation report to the decision maker(s).

- b. **Hearing format.** BMCC may conduct live hearings with all parties physically present in the same geographical location or with any or all parties, witnesses, and other participants appearing virtually, with technology enabling participants to simultaneously see and hear each other. At the request of any party, the parties will be located in separate rooms during the hearing with technology enabling the decision maker(s) and parties to simultaneously see and hear the party or the witness answering questions.
- c. **Access to evidence at the hearing.** BMCC will make all evidence directly related to the allegations available to the parties at any hearing.
- d. **Advisor and support person.** Each party may be accompanied to the hearing by: 1) one advisor of their choice; and, 2) a support person who cannot be a fact witness in the case. Support persons may participate in the hearing in a non-speaking capacity. Advisors are permitted to present information and conduct direct and cross-examination during the hearing. If a party does not have an advisor present at the hearing, BMCC will provide that party, free of charge, with an advisor of BMCC's choice, to conduct cross-examination on behalf of that party. A party's advisor may appear and conduct cross-examination even when the party whom they are advising does not appear. Where neither party nor that party's advisor of choice appears, a College provided advisor must still cross-examine any other appearing party "on behalf of" the non-appearing party, so that consideration of the appearing party's statements can be made.
- e. **Cross-examination.** Cross-examination at the live hearing will be conducted directly, orally, and in real time by the party's advisor and never by the party personally. Each party's advisor is permitted to ask the other party and any witnesses all relevant questions and follow-up questions, including questions that challenge credibility. Only relevant cross-examination may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination question (or other question), the decision maker(s) will first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
- f. **Failure to submit to cross-examination-applicable only to Title IX based prohibited conduct formal complaints.** If a party or witness does not submit to cross-examination at the live hearing, the decision maker(s) will not rely on any statement of that party or witness in reaching a determination on responsibility or on disciplinary sanctions, if any. The decision maker(s) will not draw an inference about the determination on responsibility or on disciplinary sanctions, if any, based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- g. **Recording or transcript.** BMCC will create an audio or audiovisual recording, or transcript of any live hearing or refusal to answer cross-examination or other questions.

2. Determination on responsibility and disciplinary sanctions, if any

Both parties will be: 1) simultaneously provided with the hearing decision maker(s) written decision on responsibility; and, 2) simultaneously provided with BMCC Authority's decision on disciplinary sanctions, if any. Together, these written decisions on responsibility and disciplinary sanctions will constitute the "Written Determination" that may be appealed by either party.

3. The Written Determination will include:

- a. Identification of the allegations of prohibited conduct.
- b. A description of the procedural steps taken from the receipt of the formal complaint through the determination on responsibility and disciplinary sanctions, including lists of any notifications sent to the parties, any interviews with parties and witnesses, any site visits, the methods used to gather other evidence, and the hearings held.
- c. Findings of fact supporting the determination.
- d. Conclusions regarding the application of this policy to the facts.
- e. A statement of, and rationale for, the determination on responsibility and disciplinary sanctions.
- f. A statement of, and rationale for, any disciplinary sanctions that will be imposed on the respondent, and whether BMCC will provide remedies to the complainant.
- g. BMCC's procedures and permissible bases for the parties to appeal the determination of the result of the appeal.

N. DISCIPLINARY SANCTIONS, REMEDIES, AND OTHER RESPONSIVE ACTIONS

1. The role of the BMCC College Authorities in determining, and monitoring compliance with disciplinary sanctions and other responsive actions.

- a. The responsible College Authority will decide which disciplinary sanctions and other responsive actions are to be implemented, if any.
- b. Disciplinary sanctions will not be imposed on the respondent until 1) the date on which an appeal would no longer be considered timely, if an appeal is not filed; or 2) the date that the parties are provided with the written determination of the result of the appeal, if an appeal is filed.
- c. The responsible College Authority will monitor compliance with any disciplinary sanctions or other responsive actions and address any compliance failures by the respondent.
- d. Where a student respondent is also a third party or employee, the BMCC Title IX office will determine the appropriate College authority to determine disciplinary sanctions and other responsive actions in those non-student roles. In making this determination, the BMCC Title IX office will consider case specific factors, including the context in which the alleged prohibited conduct occurred (e.g. whether it occurred in an employment or academic context) and the respondent's primary affiliation.

2. Disciplinary sanctions and other responsive actions-general information

- a. Responsive action is intended to eliminate prohibited conduct, prevent its recurrence, and promote accountability supporting BMCC's educational mission and legal obligations. Responsive action may include disciplinary, rehabilitative (including educational), restorative, and monitoring components.
- b. Disciplinary sanctions in cases with student respondents may include the following:
 - An oral or written warning.
 - Probation.
 - Required compliance with work assignments, community service assignments, or other discretionary assignments.
 - Restitution.
 - Restriction of privileges.

- Suspension or expulsion from BMCC.
 - Withholding of a diploma or degree.
 - Revocation of admission or a degree.
- c. Responsive action in cases with employee respondents (including student employees) may include any one or a combination of the following:
- Coaching or education.
 - Mentoring.
 - Changes to work duties or locations.
 - Monitoring to ensure that prohibited conduct is not occurring.
 - Probation progressive disciplinary action.
 - Transfer of position.
 - Removal of administrative appointment.
 - Demotion.
 - Salary reduction.
 - Suspension.
 - Termination of employment.
- d. Responsive action in cases with third-party respondents may include restrictions on a third-party respondent's: 1) participation in College programs or activities; 2) attendance at College events; or 3) ability to enter campus spaces, among other things.
- e. The following factors will be considered in determining the appropriate responsive action to address a determination of responsibility for prohibited conduct:
- i. The severity, persistence, or pervasiveness of the prohibited conduct.
 - ii. The nature of the prohibited conduct.
 - iii. Whether the prohibited conduct threatened physical safety.
 - iv. Any incidents or prior misconduct by a respondent, including the respondent's disciplinary history, at BMCC or elsewhere.
 - v. The impact of the prohibited conduct on other members of BMCC community.
 - vi. An assessment of a respondent's potential for development, including whether the respondent has accepted responsibility for the prohibited conduct.
 - vii. The maintenance of a safe, nondiscriminatory, and respectful work and learning environment.
 - viii. Any other mitigating, aggravating, or compelling factors.

3. Complainant Remedies

Where a decision has been made that a respondent is responsible for prohibited conduct, BMCC will provide remedies to the complainant that are designed to restore or preserve the complainant's equal access to BMCC's education programs and activities. Such remedies may include supportive measures as well as other measures that prevent the respondent from having contact with the complainant, and other measures. For example, remedies may prevent the respondent from participation in student organizations, teams, or classes in which the complainant participates. The BMCC Title IX office is responsible for effective implementation of any remedies.

O. APPEALS

1. Any party may initiate the appeal process when they receive a Written Decision. Appeals must be submitted to the designated appellate officer in writing within ten business days of receipt of the Written Decision. Appeals received after ten business days will be denied. Written Decisions that are not appealed within ten business days are final.
2. When a timely appeal is received, the other party will be sent a copy of the appeal and provided an opportunity to respond. A response to an appeal must be submitted in writing within ten business days from the party's receipt of the appeal.
3. Appeals are not intended to allow for a second review of the same information provided during the investigation, and the appellate officer will not substitute their judgment for that of the hearing decision-maker(s). Appeals are limited to the following grounds:
 - a. A procedural irregularity that affected the outcome of the matter.
 - b. New evidence that was not reasonably available at the time the determination was made that could affect the outcome of the matter.
 - c. A decision on responsibility that was not based on substantial information. Substantial information means relevant information that a reasonable person might accept as adequate to support a conclusion. In making this determination, the Appellate Officer must respect the credibility determinations of the hearing panel and must not substitute the Officer's judgment for that of the hearing body.
 - d. The sanction was grossly disproportionate to the offense.
 - e. The Title IX Coordinator, investigator(s), decision-maker(s), and/or College authority had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome to the matter.
4. In most cases, the appellate review is limited to review of the Written Determination and the appeal and response documents submitted by the parties. However, the Appellate Officer may, at their discretion, request and review the entire grievance process record.
5. The Appellate Officer will provide a written decision on the appeal to the parties. The Appellate Officer may: 1) affirm the written determination; 2) overturn the written determination; or 3) remand the case to remedy procedural errors or consider new evidence. The Appellate Officer will issue a final decision within 30 calendar days of receipt of all appeal and response documents.

X. RECORDKEEPING

- A. BMCC will maintain the following records for a minimum of seven years or longer as required by federal regulations.
 1. Records of reports of prohibited conduct made to the BMCC Title IX office, the President, or a Vice President or Dean.
 2. Records of any actions, including any supportive measures, taken in response to such a report.
 3. Records of each prohibited conduct grievance process, including:
 - a. information that is obtained, gathered, or received during the grievance process.
 - b. any written determination.
 - c. any audio or audiovisual recording or transcript of a hearing.

- d. any disciplinary sanctions imposed on a respondent.
 - e. Any remedies provided to the complainant designed to restore or preserve equal access to BMCC's education program or activity.
4. All records of any appeal.
 5. Records of any informal resolution and the results.
 6. Records of all materials used to train the Title IX Coordinators, investigators, decision-makers, and any person who facilitates and informal resolution process.
- B. BMCC will compile and maintain publicly available records, including Clery Act reporting and disclosures, without the inclusion of personally identifying information about the complainant. BMCC will provide complainants and respondents with access to their records related to any of the prohibited conduct processes set forth in this policy in accordance with the law.

XI. TRAINING

- A. Individuals who conduct BMCC's grievance process will receive training on:
1. The definitions of Title IX based prohibited conduct,
 2. The scope of BMCC's education programs and activities.
 3. How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, where applicable.
 4. How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest and bias.
 5. Technology to be used at a live hearing, where applicable.
 6. Issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.
 7. Issues of relevance to create an investigative report that fairly summarizes relevant evidence, where applicable.
- B. Individuals who conduct BMCC's Title IX grievance process (including Title IX Coordinators, investigators, decision-makers, College Authorities, Appellate Officers, and any person who facilitates an informal resolution process) will also be trained on issues related to prohibited conduct and on how to conduct a grievance process that protects the safety of victims and promotes accountability.
- C. Materials purchased/used to train individuals who conduct BMCC's grievance process will:
- Not rely on sex stereotypes.
 - Promote impartial investigations and adjudications of formal complaints of sexual harassment.
 - Be maintained by the school for at least seven years.
 - Be publicly available on the school's website.
- D. To facilitate the goals of this policy, BMCC will make training on prohibited conduct available to students, employees, and volunteers.

APPENDIX A

**HEARING PROCEDURES FOR FORMAL COMPLAINTS
OF
VIOLATIONS OF THE TITLE IX SEXUAL HARASSMENT POLICY**

I. PURPOSE AND SCOPE

This procedure provides a fair process that facilitates the informal and formal resolution of complaints of Title IX defined sexual harassment (“prohibited conduct”). This procedure applies to the adjudication of formal complaints of violations of the Title IX Sexual Harassment Policy. If there is a conflict between these procedures and the Title IX policy, then the Title IX policy controls.

I. PARTIES

- A. The parties to a formal complaint are the complainant and respondent, as defined in the Title IX Sexual Harassment Policy. The complainant is the individual who may have experienced conduct prohibited by the policy, and the respondent is the individual alleged to have engaged in prohibited conduct. In some cases, there may be more than one complainant and/or more than one respondent.
- B. The parties may be accompanied by an advisor of their choice at the hearing described in this procedure. Advisors are permitted to participate fully in the hearing.
- C. If a party does not have an advisor present at the live hearing, the College shall provide without fee or charge to that party, an advisor of the College’s choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.
- D. The party to whom the advisor is provided may choose to allow the advisor to participate more fully in the hearing.
- E. The parties may also be accompanied at the hearing by a support person, who participates in the hearing in a non-speaking capacity. A support person cannot be a fact witness to the complaint.

II. STANDARD OF PROOF, BURDEN OF PROOF, AND PRESUMPTION

- A. The standard of proof in all hearings governed by this procedure is “preponderance of the evidence” which means that it is more likely than not that the respondent violated the Title IX Sexual Harassment Policy.
- B. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the College.
- C. The respondent is presumed to be not responsible for the alleged prohibited conduct.

III. SEXUAL MISCONDUCT HEARING COMMITTEE AND HEARING PANELS

- A. The Sexual Misconduct Hearing Committee (SMHC) is comprised of College members who serve as panelists for formal hearings. Faculty, staff and students from the BMCC campus serve on the SMHC. The SMHC Secretary provides administrative and scheduling support to the hearing process.
- B. For each hearing, a hearing panel is appointed by designated College authorities to decide whether it is more likely than not that the respondent violated the Title IX Policy on Sexual Harassment.
- C. Each hearing panel will include a hearing officer, a panel member chosen by the complainant from a list of available SMHC members, and a panel member chosen by the respondent from the same list.
- D. All members of a hearing panel, including the hearing officer, are voting members and are referred to as decision makers. The decision maker(s) cannot be the same person(s) as the Title IX Coordinators or Investigators.
- E. The list of SMHC members provided to the parties must at least include at least one SMHC member of the same College classification as each party (i.e. faculty, staff, or student).
- F. If there is more than one complainant, the SMHC Secretary will work with the complainants to determine whether they can agree on a panel member. If no agreement can be reached, the SMHC Secretary has discretion to select a panel member who is agreeable to only one of the complainants. The same process shall be followed if there is more than one respondent. If a party declines to select a panel member, the SMHC Secretary will select a panel member.

IV. THE COMPLAINT

- A. The formal complaint and the Title IX office's written notice to the parties of its decision to initiate an investigation identify the specific policy provision the respondent is alleged to have violated and whether the alleged conduct has been designated as Title IX based prohibited conduct.
- B. The hearing panel must determine whether it is more likely than not that the respondent violated each policy provision contained in the formal complaint.

V. INFORMAL RESOLUTION

- A. Following an investigation of a formal complaint, the Title IX office will deliver its investigation report to the SMHC Secretary.
- B. The College does not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this section.
- C. Likewise, the College does not require the parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed.

- D. However, at any time prior to reaching a determination regarding responsibility the College may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided the College:
1. Provides the parties a written notice disclosing: The allegations; the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal grievance process and resume the grievance process with respect to the formal complaint; and, any consequences resulting from participating in the informal resolution process, including records that will be maintained or could be shared.
 2. Obtains both party's voluntary written consent to the informal resolution process.
 3. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.
- E. For cases involving a respondent who is a student, the SMHC Secretary will share the report with the Dean of Student Services, who is responsible for resolving student misconduct complaints in accordance with the BMCC Student Handbook, to determine whether that office will propose an informal resolution of the formal complaint.
- F. For cases involving a respondent who is an employee or other non-student College member, the SMHC Secretary will share the report with the appropriate College Authority to determine whether the College Authority will propose an informal resolution.
- G. The SMHC Secretary will not seek a proposed informal resolution of allegations of Title IX based prohibited conduct if the respondent is an employee and the complainant is the student.
- H. If an informal resolution is not proposed, the matter will proceed to a hearing.
- I. If an informal resolution is proposed, the SMHC Secretary will simultaneously share the investigative report and proposal with the parties, who may accept the informal resolution within 7 calendar days. If both parties accept the informal resolution, the matter is considered fully and finally resolved.
- J. If either party rejects the informal resolution, the matter will proceed to hearing.

VI. SCHEDULING

- A. If the parties have not been offered or have not agreed to an informal resolution, the SMHC Secretary will schedule a hearing. The SMHC Secretary will obtain from the Title IX office all evidence the Title IX office gathered as part of its investigation of the formal complaint and will determine what evidence is relevant to the allegations in the formal complaint so that this information, at a minimum, can be provided to the parties and the hearing panel in advance of the hearing. Relevant information is evidence that is pertinent to proving whether the facts material to the allegations in the formal complaint are more or less likely to be true. Despite its relevance, information subject to a legally protected privilege and treatment records offered without an individual's voluntary, written consent will not be provided to the parties and hearing panel.
- B. The SMHC Secretary will contact the parties to appoint a hearing panel. The SMHC Secretary will send the parties a list of available SMHC members. No later than 7 calendar days after the SMHC Secretary sends the list, each party must tell the SMHC Secretary

which SMHC member the party chooses to serve on the panel. Each party has then 5 calendar days to submit an objection to a panel member identified by the other party, along with a short statement of the basis for the objection.

- C. If the objection is based on an allegation of bias or conflict of interest, the hearing officer will decide if the panel member should be excluded from the panel. The party whose panel member of choice was excluded from the panel will given an opportunity to select a replacement panel member. If the objection is to the hearing officer, the SMHC Secretary will decide if the hearing officer should be replaced and, if so, will arrange for the replacement. When the hearing panel is set, the SMHC will deliver, at a minimum, copies of all evidence relevant to the allegations in the complaint to each member of the hearing panel.
- D. Once the hearing panel is appointed and at least 10 calendar days prior to the hearing, the SMHC Secretary will send the parties a written notice of hearing that includes the following:
 1. Investigative Report. If the parties did not receive a copy of the investigative report in connection with a proposed informal resolution, the SMHC Secretary will attach the investigative report to the written notice of hearing.
 2. Details. The written notice of hearing will include the date, time, and location of the hearing and the parties to the hearing. The notice will advise that the purpose of the hearing is to determine whether the respondent violated the specific policy provisions identified in the formal complaint. The notice will indicate whether the hearing is scheduled to take place virtually (via an electronic platform) or in person. If the hearing is scheduled to take place in person, each party must notify the SMHC Secretary no later than 5 calendar days prior to the hearing if the party objects to an in-person hearing. If either party objects to an in-person hearing, the hearing will instead be conducted virtually.
 3. Witnesses. Each party must submit to the SMHC Secretary at least 5 calendar days prior to the hearing a list of all witnesses the party intends to question at the hearing. If the witness was interviewed by the Title IX office during the investigation process, the SMHC Secretary will contact the witness and invite the witness to the hearing. If the witness is one who was not interviewed during the investigation process, the party is responsible for contacting that witness and arranging for the witness to attend the hearing. The SMHC Secretary may also invite witnesses to appear at the hearing who were not identified by either party, if such witnesses were interviewed during the investigation process. Witnesses are not obligated to attend the hearing.
 4. Response. At least 5 calendar days prior to the hearing, each party may submit to the SMHC Secretary a written response to the investigation report for consideration by the hearing panel.
 5. Evidence. The parties will be provided, at a minimum, with copies of all evidence the SMHC Secretary has determined relevant to the allegations in the formal complaint. At least 5 calendar days prior to the hearing, each party must submit to the SMHC Secretary any new evidence the party plans to submit to the hearing panel that was not considered during the investigation process. The hearing officer will determine if the newly submitted evidence is relevant to the allegations in the formal complaint. If the evidence is determined to be relevant, the SMHC Secretary will make the newly submitted evidence available to the hearing panel at the hearing.

VII. HEARING

A. Decorum

1. All hearings before the SMHC are governed by the following rules of decorum.
2. Prior to the hearing, no ex parte contact or discussion of the case with the hearing panelist/decision makers is allowed.
3. All electronic devices, other than devices necessary for participation in a hearing conducted virtually, must be turned off or silenced during the hearing.
4. When a hearing is conducted virtually, all participants must ensure that they are in a private, secure space for the duration of the hearing. Participants must mute their microphones unless they have an active speaking role (i.e. making opening or closing comments, conducting cross-examination, answering questions). Participants must not turn off their cameras during the hearing.
5. All participants must conduct themselves in a respectful manner at all times during a hearing. For example, participants may not yell, invade the personal space of other participants, badger witnesses, use profanity, engage in ad hominem attacks, ask the same question repeatedly, or otherwise ask questions in a manner that is harassing, intimidating, or abusive.
6. If a participant needs to leave the hearing for any reason, the participant must ask the hearing officer for a break in the proceedings.
7. The hearing officer has authority to ensure that the hearing is conducted in accordance with these rules of decorum. If a party's advisor does not comply with these rules, the hearing officer will require the party to use a different advisor. If necessary, the College will provide the party with a new advisor to conduct cross-examination.

VIII. RECORD OF HEARING

- A. Hearings are closed to the public. In certain limited circumstances, a third party may be permitted to attend a hearing, such as to provide reasonable accommodations for a participant with a disability or with agreement of the parties and the hearing officer. The SMHC Secretary will record the hearing. No other participant is permitted to create an audio, visual, or other recording of the hearing.
- B. The College will maintain the record of the hearing, the formal complaint, all evidence presented at the hearing, and all other related documentation for the longer of seven years or the any revised requirements of Title IX regulations.

IX. APPEARANCE

- A. Complainants, respondents, and witnesses are not required to attend the hearing.
- B. If a party declines to attend the hearing, the party's advisor may still attend the hearing and conduct cross-examination on behalf of the party, but may not otherwise participate in the hearing, other than in a non-speaking capacity.
- C. If neither the party nor the party's advisor attend the hearing, the College will provide an advisor for the sole purpose of conducting cross-examination on behalf of the absent party.

X. EVIDENCE REVIEW PRIOR TO HEARING

Prior to the hearing, the hearing panel will have reviewed, at a minimum, the formal complaint, the investigation report, all evidence gathered by the College during the investigation process that is relevant to the allegations in the formal complaint, and any written response to the investigation report submitted by a party.

XI. CASE PRESENTATION

- A. The parties should prepare for a clear, complete, and concise presentation of their cases. Except in exceptional cases as determined by the hearing officer, each party will be limited to three hours for the presentation of the party's case.
- B. Each party may present brief opening comments. The hearing panel will then have the opportunity to ask any questions it has of the parties. The parties may present testimony and information relevant to the allegations in the formal complaint, and the other party can object to the presented information. The hearing officer will determine whether information is relevant, in which case it will be admitted into the record.
- C. Parties can offer witnesses at the hearing, and they should arrange for witnesses to offer live testimony, if at all possible. If a witness chooses not to attend an in-person hearing, the witness can also provide testimony virtually. If the formal complaint does not allege that the respondent engaged in title IX based prohibited conduct, a witness can also provide testimony by written statement. After a party questions a witness, the other party and the hearing panel will have the opportunity to question that witness. Non-party witnesses are only allowed to attend a hearing during their testimony.
- D. Finally, the parties can close their presentations with closing comments.

XII. DIRECT EXAMINATION AND CROSS-EXAMINATION

- A. All relevant questions may be asked during the hearing, including questions that challenge credibility. Questions that are duplicative may not be considered relevant. Questions concerning the complainant's prior sexual behavior are also not relevant, unless they 1) are intended to elicit information that proves that the respondent was misidentified or 2) concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove content.
- B. Before a party or witness answers any question, the hearing officer will state either that the question is relevant, in which case the party or witness can answer the question, or not relevant, in which case the question is excluded. If the hearing officer excludes the question as not relevant, the hearing officer must state the reason for the determination. A party cannot challenge the hearing officer's determination on relevance during the hearing.
- C. Cross-examination at the hearing will be conducted by the parties' advisors. The parties are not permitted to conduct cross-examination. A party who declines to attend a hearing may have the party's advisor attend the hearing for the purpose of conducting cross-examination. If neither party nor the party's advisor attends the hearing, the college will provide the party an advisor for the purpose of conducting cross-examination.
- D. In a case where the respondent is alleged to have engaged in Title IX based prohibited conduct and a party or witness declines to submit to cross-examination at the hearing, the hearing panel cannot rely on any statement of that party or witness in determining responsibility. In the event that a party's advisor states that the party does not have any

cross-examination questions to ask the other party or witness, the hearing officer will ask the other party or witness if they were prepared to submit to cross-examination. If the answer is “yes”, the hearing officer will afford the hearing panel an opportunity to ask any questions necessary for the hearing panel to test the credibility of the other party or witness.

XIII. DECISION

- A. At the close of the hearing, the hearing panel will deliberate in a session. Only the hearing panel and the SMHC Secretary will attend this session.
- B. The hearing panel is tasked with the objective evaluation of all relevant evidence. The hearing panel will assign little weight, if any, to character evidence concerning any party and to evidence of a party’s prior bad acts that are not substantially related to the conduct at issue. It will assign this evidence that same weight whether it concerns a complainant or a respondent. Similarly, the hearing panel will not make credibility determinations that turn on a participant’s status as a complainant, a respondent, or a witness.
- C. The panel must make a determination of responsibility based on a preponderance of the evidence with respect to each policy provision the respondent is alleged to have violated.
- D. The hearing panel need not be unanimous in its decision, but a majority of the panel members must agree for the respondent to be found responsible for a policy violation.

XIV. WRITTEN DETERMINATION

- A. In all cases, the parties and their advisors will: 1) simultaneously receive the hearing panel’s written decision on responsibility that articulates the basis for the decision and 2) simultaneously receive the College authority’s decision on the disciplinary sanction(s) that will be imposed, if any. Together, these written decisions on responsibility and disciplinary sanctions will constitute the “Written Determination” that may then be appealed by the parties.
- B. The Written Determination will include the following:
 - 1. The allegations of prohibited conduct.
 - 2. A description of the procedural steps taken by the College from its receipt of the formal complaint through the hearing, including a list of the notifications sent to the parties, any interviews and site visits, the methods used to gather evidence, and the hearing.
 - 3. Findings of fact.
 - 4. An application of the policy provisions alleged to have been violated to the facts.
 - 5. A statement of the rationale for any determination regarding responsibility.
 - 6. How to appeal and the limited basis for appeals under the Title IX policy.
 - 7. A statement of any specific disciplinary sanction and the rationale behind it.
- C. In cases with student respondents where the hearing panel finds a respondent responsible, the hearing panel will also decide the appropriate disciplinary sanction, as provided in the Title IX Sexual Harassment Policy. The hearing panel will then draft the Written Determination that will be provided simultaneously to the parties and their advisors. In addition, the hearing panel may make a recommendation to the Title IX Office about remedies to be offered to a complainant, such as barring a respondent from participating in activities or class in which a complainant participates.

- D. In cases with faculty, non-student staff, or third-party respondents, the hearing panel limits its decision to whether it is more likely than not that a respondent violated the Title IX Sexual Harassment policy. The hearing panel may, at its discretion, make recommendations about disciplinary sanctions and other responsive actions, as well as a recommendation to the Title IX office about remedies to be offered to the complainant. The hearing panel's decision on responsibility is then sent simultaneously to the parties, their advisors, and the designated College Authority. In cases where a finding of responsibility is made, the designated College Authority will make the decision on appropriate disciplinary sanctions as provided in the Title IX Sexual Harassment Policy. This written decision will be provided simultaneously to the parties and their advisors.
- E. Third-party respondents may be barred from participation in College programs or access to College facilities.
- F. In cases with faculty, non-student staff, and third-party respondents, the hearing panel's decision on responsibility and the College Authority's decision on disciplinary sanctions together form the Written Determination that may be appealed by the parties.

XV. APPEAL

- A. Any party may file an appeal within 10 calendar days of receipt of the written determination. The appeal must be in writing and submitted to the appellate Officer. Appeals that are not timely filed will be denied.
- B. The appellate Officer will forward a timely filed appeal to any other party, who then has 10 calendar days to submit a written response to the appeal. The Appellate Officer has discretion to ask for additional information from a party or to request information from the panel.
- C. The following are the only available grounds for appeal:
 - 1. Procedural irregularity that affected the outcome.
 - 2. New evidence that was not reasonably available at the time of the written determination that could have affected the outcome.
 - 3. The sanction was grossly disproportionate to the offense.
 - 4. A decision on responsibility that was not based on substantial information. Substantial information means relevant information that a reasonable person might accept as adequate to support a conclusion. In making this determination, the Appellate Officer must respect the credibility determinations of the hearing panel and must not substitute the Officer's judgment for that of the hearing panel.
 - 5. The Title IX Coordinator, the investigator, the hearing panel, and/or the College Authority had a conflict of interest or bias that affected the outcome.
- D. The appellate Officer will review the parties' written submissions and the Written Determination and, if necessary, the entire record of the grievance process.
- E. The Appellate Officer will issue a written decision that (1) affirms, in whole or part, the decision on responsibility; (2) overturns, in whole or in part, the decision on responsibility, (3) adjusts the disciplinary sanction, or (4) remands the matter to remedy procedural errors or consider new evidence. The Appellate Officer will issue a decision within 30 days.
- F. The decision of the Appellate Officer is the final College decision.