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## Title IX Formal Grievance Process Guide

This guide is a supportive document to MCW Policy AD.CC.080 Prohibiting Sexual Harassment and Abuse in Education Programs and all definitions listed within this document are in reference to the policy.

MCW recognizes and values the dignity of all members of the MCW community and strives to balance the rights of the Parties in the Formal Grievance process during what is often a difficult time for all involved. MCW's Title IX Coordinator will oversee the Formal Grievance process following the receipt of a Formal Complaint requesting a Formal Grievance process unless both Parties have agreed to an Informal Resolution process. The Title IX Coordinator appoints trained investigator(s), decision maker(s) for the hearing process, and Advisors for the Parties upon request. The Title IX Coordinator may serve as an investigator. MCW in its sole discretion, may appoint a qualified external individual(s) to serve in the role of an investigator(s), Advisor(s), Informal Resolution Facilitator and/or decision maker(s).

The Title IX Coordinator will provide written notice of the investigation and allegations to the Parties on commencement of the Formal Grievance process. This facilitates the Party's ability to prepare for the interviews and identify an Advisor to accompany them. The notice will be delivered via email (or US Postal mail if an email address is not available) and once emailed; the notice will be presumptively delivered.

The written notice will include the following:

- A meaningful summary of all of allegations,
- The identity of the involved Parties (if known),
- The precise Prohibited Offense(s) being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that MCW presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the Parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about MCW's policy on Retaliation,
- Information about the privacy of the process,
- Information on the need for each Party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- A statement informing the Parties that MCW's Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution

- process,
- Detail on how the Party may request disability accommodations during the interview process,
- A link to MCW's VAWA Brochure,
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the notice may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

### *Delays*

MCW may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include but are not limited to a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of Parties and/or witnesses, accommodations for disabilities or health conditions or other circumstances that are deemed appropriate.

MCW will communicate in writing the anticipated duration of the delay and reason to the Parties and provide the Parties with status updates as necessary. MCW will promptly resume its investigation and resolution process as soon as feasible. During such a delay, MCW will implement Supportive Measures as deemed appropriate.

### *Ensuring Impartiality*

Any individual materially involved in the administration of the resolution process, including the Title IX Coordinator, investigator(s), and decision-maker(s), may neither have nor demonstrate a conflict of interest or bias for a Party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The Parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another individual will be assigned and the impact of the bias or conflict, if any, will be remedied. If an MCW employee or student believe that a conflict of interest exists by the Title IX Coordinator or within the Title IX Formal Grievance process, they should report the specific nature of the conflict of interest to the Vice President of Corporate Compliance and Risk Management. If a conflict of interest is determined to be present, the Corporate Compliance Office will remedy the situation by securing another trained individual to oversee the process in lieu of the Title IX Coordinator.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

MCW operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined by a hearing panel to be responsible

for a Prohibited Offense by a Clear and Convincing standard of evidence.

MCW will treat Complainants and Respondents with respect and in an equitable manner. MCW will follow a Formal Grievance process before the imposition of any disciplinary sanctions or other actions that are not Supportive Measures against a Respondent. The burden of proof and the burden of gathering evidence rests with MCW. MCW will provide sufficient time to each Party before an initial interview.

### *Investigation*

The Title IX Coordinator will vet and appoint an investigator(s). The Title IX Coordinator may serve in this role as well. All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant Parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All Parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

The investigator may decline to interview witnesses unlikely to provide relevant information such as character witnesses who have no relevant information regarding the allegations. The Parties will be able to fully review and respond to all relevant evidence on the record. Evidence and questions are generally considered relevant if there is a tendency to make a fact more or less probable than it would be without the evidence and the fact is of consequence in determining the action.

Witnesses (as distinguished from the Parties) who are MCW employees are expected to cooperate with and participate in the investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.

Although in-person interviews for Parties and all potential witnesses are ideal, circumstances may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the investigator(s) determines that timeliness or efficiency dictate a need for remote interviewing. MCW will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If investigator(s) elect to audio and/or video record interviews, all involved Parties must be made aware of the audio and/or video recording.

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the Parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove Consent.

The investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant.
- In coordination with campus partners (e.g., the Title IX Coordinator), initiate or assist with any necessary Supportive Measures.
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated.
- Assist the Title IX Coordinator with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation.
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the Parties.
- Meet with the Complainant to finalize their interview/statement, if necessary.
- Prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations.
  - Notice should inform the Parties of their right to have the assistance of an Advisor, of their choosing or appointed by MCW (upon request) present for all meetings attended by the Party.
- Provide each interviewed Party and witness an opportunity to review and verify the investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings.
- When participation of a Party is expected, provide that Party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose.
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary.
- Allow each Party the opportunity to suggest witnesses and questions they wish the investigator(s) to ask of the other Party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions.
- Complete the investigation promptly and without unreasonable deviation from the intended timeline.
- Provide regular updates to the Parties throughout the investigation if delays are occurring.
- Prior to the conclusion of the investigation, provide the Parties and their respective Advisors (if so desired by the Parties) with a list of witnesses whose information will be used to render a finding.
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included.
- The investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report.
- Prior to the conclusion of the investigation, provide the Parties and their respective Advisors (if so desired by the Parties) a secured electronic copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which MCW does not intend to rely in reaching a determination, for a ten (10) calendar day review and comment period so that each

Party may meaningfully respond to the evidence. The Parties may elect to waive the full ten (10) days.

- Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor).
- The investigator(s) may elect to respond in writing in the investigation report to the Parties' submitted responses and/or to share the responses between the Parties for additional responses.
- The investigator(s) will incorporate relevant elements of the Parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The investigator(s) should document all rationale for any changes made after the review and comment period.
- The investigator(s) shares the report with the Title IX Coordinator and/or legal counsel for their review and feedback
- The investigator will incorporate any relevant feedback, and the final report is then shared with all Parties and their Advisors through secure electronic transmission or hard copy at least ten (10) calendar days prior to a hearing.

### *Hearings*

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the Parties, the Title IX Coordinator will refer the matter for a hearing. The final investigation report and evidence is provided to the hearing decision-maker(s) prior to the hearing.

### *Hearing Decision-Makers*

MCW will designate a single decision-maker or a three-member hearing panel at the discretion of the Title IX Coordinator. The single decision-maker will also Chair the hearing. With a panel, one of the three members will be appointed as Chair by the Title IX Coordinator.

The decision-maker(s) will not have had any previous involvement with the investigation. Those who have served as investigators will be witnesses in the hearing and therefore may not serve as decision-makers. Those who are serving as Advisors for any Party may not serve as decision-makers in that matter.

The Title IX Coordinator may not serve as a decision-maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Chair or designee.

### *Evidence Considerations for the Hearing*

Any evidence that the decision-maker(s) determine(s) is relevant and credible may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the Parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual

behavior with respect to the Respondent and are offered to prove Consent.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process and is not shared until then.

The Parties may each submit a written impact statement prior to the hearing for the consideration of the decision-maker(s) at the sanction stage of the process when a determination of responsibility is reached.

The hearing panel will not rely upon information protected by legal privilege unless a waiver is obtained. The hearing panel must not draw any inferences based upon a Party's failure to appear or submit to cross-examination. Questions and evidence regarding the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence offer to provide that someone other than the Respondent committed the alleged conduct or to prove Consent.

#### *Standard of Evidence*

After post-hearing deliberation, the decision-maker(s) renders a determination based on Clear and Convincing evidence; whether there is a high probability that the Respondent violated the Policy as alleged.

#### *Pre-Hearing Preparation*

Any witness scheduled to participate in the hearing must have been first interviewed by the investigator(s), unless all Parties and the Chair assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the Parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair may delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

The Parties will be given a list of the names of the decision-maker(s) at least five (5) business days in advance of the hearing. All objections to any decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than two (2) business days prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Title IX Coordinator will give the decision-maker(s) a list of the names of all Parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the Parties, witnesses, and Advisors in advance of the hearing. If a decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10) calendar day period prior to the hearing, the Parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at the pre-hearing meeting or at the hearing and will be exchanged between each Party by the Chair.

### *Pre-Hearing Conference*

A pre-hearing meeting may be held by the Chair or a hearing facilitator to discuss the process, determine witnesses to be called, and other matters of procedure. Each Party and their Advisor can use this time to ask any questions. Any witness scheduled to participate must have been interviewed by the investigator(s). The same holds for any evidence. The Chair, only with full agreement of the Parties, may determine in advance of the hearing that certain witnesses do not need to be present if their testimony can be summarized by the investigator(s) in the investigation report or during the hearing.

At each pre-hearing meeting with a Party and their Advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant.

The Chair may rule on these arguments pre-hearing and will exchange those rulings between the Parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator or ask either or both to attend pre-hearing meetings.

The pre-hearing meeting(s) will be audio or video recorded or a written record will be maintained.

### *Live Hearing*

A live hearing will be scheduled providing at least ten (10) calendar days to each Party and their Advisor following the receipt of the final investigation report by the Parties. The hearing will be held in order for each Party's Advisor to conduct cross examination of the other Party and any witnesses asking relevant questions and follow-up questions including those challenging credibility. Such cross examination at the hearing must be conducted directly, orally, and in real time by the Advisor for the Party, never by a Party. MCW will provide separate rooms with technology enabling Parties to simultaneously see and hear the Party or witnesses answering questions upon request or if MCW determines a need to do so. A hearing officer or panel will be the decision makers at the hearing. An audio or audiovisual recording, or transcript of the hearing will be created and will be made available for the Parties to review. No unauthorized audio or video recording of any kind is permitted during any meetings.

The hearing officer or panel will not rely upon information protected by legal privilege unless a waiver is obtained. The hearing panel must not draw any inferences based upon a Party's failure to appear or submit to cross-examination. Questions and evidence regarding the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence offer to provide that someone other than the Respondent committed the alleged conduct or to prove Consent.

At the hearing, the decision-maker(s) has the authority to hear and make determinations on all allegations of Prohibited Offenses. Participants at the hearing will include the hearing Chair, hearing panelists, the hearing facilitator if determined one is needed, the investigator(s) who conducted the investigation, the Parties, Advisors to the Parties, any called witnesses, the Title IX Coordinator, MCW legal counsel, and anyone providing authorized accommodations or assistive services.

The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear only at the portion of the hearing in order to respond to specific questions from the decision-maker(s) and the Advisor(s) on behalf of the Parties and will then be excused.

### *Parties and Witnesses*

Witnesses (as distinguished from the Parties) who are MCW employees are expected to cooperate with and participate in the investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.

Although in-person interviews for Parties and all potential witnesses are ideal, circumstances may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. MCW will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the investigator(s), though not preferred.

The hearing officer or panel must issue a written determination concurrently to each Party regarding responsibility and will use the Clear and Convincing standard of evidence. The determination will include identification of the allegations constituting Prohibited Offenses, procedural steps, findings of facts supporting the determination, conclusions regarding the application of MCW's policy to the facts, rationale for each allegation, sanctions being imposed, how the remedies are designed to restore or preserve the equal access to Educational Programs and Activities and access to an appeal process.

### *Notice of Hearing*

No less than ten (10) calendar days prior to the hearing, the Title IX Coordinator or the Chair will send notice of the hearing to the Parties. Once emailed and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- Any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the Parties located in separate rooms using technology that enables the decision-maker(s) and Parties to see and hear a Party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) calendar days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any



decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.

- Information on how the hearing will be recorded and on access to the recording for the Parties after the hearing.
- A statement that if any Party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. For compelling reasons, the Chair may reschedule the hearing.
- Notification that the Parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The Party must notify the Title IX Coordinator if they do not have an Advisor, and MCW will appoint one. Each Party must have an Advisor present. There are no exceptions.
- A copy of all the materials provided to the decision-maker(s) about the matter, unless they have been provided already.
- An invitation to each Party to submit to the Chair an impact statement pre-hearing that the decision-maker will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) calendar days prior to the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline.

In these cases, if the Respondent is a graduating student, a hold may be placed on official transcripts until the matter is fully resolved (including any appeal).

### *Hearing Procedure*

1. Introductions and Procedures (Chairperson)
2. Investigator(s) Presents a Summary of the Final Investigation Report (Investigator(s))
  - Hearing Decision maker(s) questions Investigator
  - Complainant's Advisor questions Investigator
  - Respondent's Advisor questions Investigator
  - Follow-up questions for Investigator (in same order as before)
3. Complainant's Statement (15 minutes) and Response to Questions
  - Hearing Decision maker(s) questions Complainant
  - Respondent's Advisor questions Complainant
4. Respondent's Statement (15 minutes) and Response to Questions
  - Hearing Decision maker(s) questions Respondent
  - Complainant's Advisor questions Respondent
5. Witness Statements and Response to Questions (repeat for each witness)
  - Hearing Decision maker(s) questions Witness
  - Complainant's Advisor questions Witness
  - Respondent's Advisor questions Witness
  - Follow-up questions for Witness (in previous order)
6. Complainant Closing Statement (15 minutes) and Last Questions
7. Respondent Closing Statement (15 minutes) and Last Questions

If a Party's Advisor of choice refuses to comply with the MCW's established rules of decorum for the hearing, MCW may require the Party to use a different Advisor. If an MCW provided Advisor refuses to comply with the rules of decorum, MCW may provide that Party with a different Advisor to conduct cross-examination on behalf of that Party.

### *Recording*

Hearings (but not deliberations) are recorded by MCW for purposes of review in the event of an appeal. The Parties may not record the proceedings and no other unauthorized recordings are permitted.

The decision-maker(s), the Parties, their Advisors, and appropriate administrators of MCW will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

### *Deliberation*

The decision-maker(s) will deliberate privately to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. The Clear and Convincing evidence standard of proof is used. The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations. The Chair may consult with legal counsel during deliberations, at the Chair's request. When there is a finding of responsibility on one or more of the allegations, the decision-maker(s) may then consider the previously submitted Party impact statements in determining appropriate sanction(s).

The Chair will ensure that each of the Parties has an opportunity to review any impact statement submitted by the other Party(ies). The decision-maker(s) may – at their discretion – consider the statements, but they are not binding.

The decision-maker(s) will review the statements and any pertinent conduct history provided by other appropriate MCW officials and will evaluate the appropriate sanction(s) in consultation with other appropriate administrators, as required.

The Chair will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, and any sanctions or recommendations.

This report is typically three (3) to five (5) pages in length and must be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will simultaneously notify the Parties.

### *Notice of the Outcome*

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome. The Notice of Outcome will then be reviewed by legal counsel. The Title IX

Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the Parties and their Advisors within seven (7) business days of receiving the decision-maker(s)' deliberation statement.

The Notice of Outcome will then be shared with the Parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the Parties as indicated in official records, or emailed to the Parties' MCW email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will articulate the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by MCW from the receipt of the misconduct report to the determination, including any and all notifications to the Parties, interviews with Parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent MCW is permitted to share such information under state or federal law; any sanctions issued which MCW is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to MCW's Educational or employment Program or Activity, to the extent MCW is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

The Notice of Outcome will also include information on when the results are considered by MCW to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

### *Possible Hearing Outcomes*

Considerations by the hearing panel:

- A. Interim or permanent measures designed to (among other things) address any hostile environment and preserve the safety of the MCW working and learning environment, and community;
- B. Recommended counseling (EAP, student mental health services), recommended education and training, and/or other administrative actions deemed appropriate;
- C. If a finding of responsibility is determined about the conduct of the Respondent, sanctions of an appropriate nature which are found in the institutional policies and Handbooks applicable to the individuals, taking into consideration the nature, severity and circumstances surrounding the violation, the Respondent's disciplinary history, previous allegations involving similar conduct, and other information deemed relevant by the decision-makers and which include but are not limited to:
  - a. Students: administrative leave of absence, disciplinary actions including probation pursuant to the applicable student handbook, drug / alcohol testing, recommended counseling, restricted access, parking re-assignment, monitoring, no contact order(s), suspension, temporary withdrawal, and/or other educational sanctions including but not limited to expulsion.

- b. Faculty: administrative leave of absence, letter of non-renewal, restricted access, change in duties/responsibilities, monitoring, no contact orders, drug/alcohol testing, recommended counseling, parking re-assignment, monitoring, no contact order(s), and/or other sanctions as determined appropriate by MCW and in accordance with applicable institutional policies, up to and including discipline, suspension or termination for cause.
- c. Staff: administrative leave of absence, recommended counseling, restricted access, change in duties/responsibilities, monitoring, no contact order(s), drug/alcohol testing, parking re-assignment, and/or other sanctions as determined appropriate by MCW and in accordance with permitted actions under institutional guidelines, such as discipline, suspension or termination.
- d. In all instances, MCW reserves the right to broaden or lessen any range of recommended sanction(s) in the event of serious mitigating circumstances or egregiously offensive behavior.

## Appeals

The Complainant and Respondent may each submit an appeal to the Title IX Coordinator via email at [TitleIXCoordinator@mcw.edu](mailto:TitleIXCoordinator@mcw.edu) within seven (7) calendar days of MCW's provision of the hearing report that includes the outcome and sanctions if any. In computing the seven-day period, the day on which MCW provides the outcome and sanction(s) (if any) shall not be included, and the last day of the seven-day period shall be included.

MCW shall make every effort to conclude the appeal process in a prompt manner.

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive Measures may be reinstated, subject to the same procedures in this policy. If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then Emergency Removal procedures on the justification for doing so must be permitted.

The appeal process is not a hearing or a review of the entire matter; rather, it is a review of the record and process only. Appeal decisions shall be deferential to the original findings, remanding or modifying only for a clear and compelling reason(s). Further, any sanction(s) shall be modified only for a clear and compelling reason(s).

Grounds for appeals are limited to:

- a. Procedural irregularity that affected the outcome of the matter;
- b. Discovery of new evidence unknown or reasonably unavailable during the investigation that could substantially impact the original finding and/or sanction(s).
- c. 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 the individual Complainant or Respondent that affected the outcome of the matter.

An appeal will be dismissed if it is filed after the deadline or it is beyond or outside of the grounds available for an appeal.

The appealing Party/ies may submit a written statement to the Title IX Coordinator along with the Notice of decision to appeal. Untimely appeal notifications, and/or any statements or portions thereof that do not comply with the grounds for appeal will not be considered. The Title IX Coordinator will notify the Party(ies) if that is the case.

An appeal adjudicator will be appointed and vetted to ensure no known conflict of interest exists. The appeal adjudicator will not be the same individual that served as the decision-makers, investigator or Title IX Coordinator.

The non-appealing Party shall promptly be notified of the appealing Party's appeal and will receive a copy of the appealing Party's statement. If both Parties appeal, each may review the other's statement.

The other Party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the investigators and/or the original decision-maker(s) will be provided a copy of the request with the approved grounds and the Parties are then given ten (10) calendar days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Chair to all Parties for review and comment.

The appeal adjudicator will do a review limited to the specific grounds for appeal. The adjudicator will review the appeal documents submitted, the hearing records, or other evidence needed to review the appeal.

The appeal adjudicator will make one of the possible determinations:

- a) deny the appeal as having no merit and uphold the original hearing finding(s) and any sanction(s);
- b) grant the appeal, vacate the decision and remand to the investigator and/or hearing Chair for further action.

The appeal adjudicator shall provide a written copy of their finding(s) and rationale to the Title IX Coordinator. The Title IX Coordinator shall review and consult with legal counsel if necessary.

A Notice of Appeal Outcome will be sent to the Parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which MCW is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent MCW is permitted to share under state or federal law.

The appeal outcome including any sanction(s) is final.

### *Appeal Considerations*

- An appeal is not an opportunity for an appeal adjudicator to substitute their judgment for that of the original decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The appeal adjudicator may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed.
- Appeals granted based on new evidence should normally be remanded to the original

investigator(s) and/or decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.

- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).
- In rare cases where a procedural error cannot be cured by the original decision-maker(s) (as in cases of bias), the appeal may order a new hearing with new decision-maker(s).
- The results of a remand to a decision-maker(s) cannot be appealed. The results of a new hearing can be appealed, once, on any of the available appeal grounds.
- In cases in which the appeal results in reinstatement to MCW or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

### *Long-Term Remedies/Other Actions*

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the Parties and/or the campus community that are intended to stop the Sexual Harassment, Prohibited Offenses and/or Retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance or Student Assistance Programs
- Education to the individual and/or the community
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Implementation of long-term contact limitations between the Parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the Parties even if no policy violation is found. When no policy violation is found, the Title IX Coordinator will address any remedies owed by MCW to the Respondent to ensure no effective denial of educational access. MCW will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair the MCW's ability to provide these services.

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from MCW and may be noted on a student's official transcript.

A suspension will only be lifted when MCW has determined at its sole discretion that compliance has been achieved.

### *References*

Please see the MCW Policy AD.CC.080 Prohibiting Sexual Harassment and Abuse in Education Programs, Title IX Resolution Process and Informal Resolution Process Guides for further information.

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