



Mitchell Technical College Procedure 117 – Grievance Process A
August 14, 2020

GRIEVANCE PROCESS – PROCESS A¹

ATIXA 2020 INTERIM MODEL SEXUAL HARASSMENT POLICIES AND PROCEDURES
USE AND ADAPTATION OF THIS MODEL WITH CITATION TO ATIXA IS PERMITTED THROUGH A LIMITED LICENSE TO
MTC. ALL OTHER RIGHTS RESERVED. ©2020. ATIXA

1. **Definitions**

See MTC Policy 117

2. **Overview**

If a Complainant files a Formal Complaint requesting investigation of allegations of sexual harassment against a Respondent, Mitchell Technical College (MTC) will initiate the Grievance Process known as Process A.

Process A may also be used to address collateral misconduct (e.g., retaliation, vandalism, physical abuse of another) arising from the investigation of or occurring in conjunction with the reported alleged sexual harassment covered under Policy 117. All other allegations of misconduct unrelated to incidents covered by Policy 117 will be addressed through procedures described in other policies, procedures, or handbooks.

The following items pertain to the overall Grievance Process.

a) **Advisor**

MTC will not limit the choice or presence of an Advisor ([Appendix A](#)) for either the Complainant or Respondent in any meeting or grievance proceeding; however, MTC may establish restrictions regarding the extent to which the Advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.

When MTC provides the parties the opportunity to have someone other than their Advisor also present during a grievance proceeding, MTC will provide the parties with the same opportunities.

b) **Consolidation of Formal Complaints**

MTC may consolidate Formal Complaints as to allegations of sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a Grievance Process involves more than one Complainant or more than one Respondent, references in this procedure to the singular “party,” “Complainant,” or “Respondent” include the

¹117 policy and procedures are tightly woven. Therefore, any reference to policy or procedure may be referring to the 117 policy and procedures as a whole. It is important to use Policy 117 in conjunction with this procedure, and not to use this procedure as a stand-alone document.

plural, as applicable.

c) Counterclaims

MTC is obligated to ensure that the grievance process is not abused for retaliatory purposes. MTC permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by a Respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.

Counterclaims determined to have been reported in good faith will be processed using the Grievance Process. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur. Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator.

When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of Policy 117 and/or Policy 115.

d) Disciplinary Sanctions

Disciplinary sanctions are consequences that may be imposed by MTC on a Respondent who is found to have violated this policy. Disciplinary sanctions may be punitive and may burden the Respondent. Disciplinary sanctions cannot be the same as the supportive measures offered by MTC.

See [Appendix B](#) for the determination, implementation, and types of disciplinary sanctions.

e) Disabilities Accommodations in the Resolution Process

MTC is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to MTC's resolution process.

Anyone needing such accommodations or support should contact the MTC Disability Services Coordinator or the Dean of Student Success who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

f) Emergency Removal

Student Respondent - MTC can act to remove a student Respondent entirely or partially from its education program or activity on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator.

In all cases in which an emergency removal is imposed, the student will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified. This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested, objections to the emergency removal will be deemed waived.

A student Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion.

MTC will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

Employee Respondent - Where the Respondent is a non-student employee, the employee may be placed on administrative leave (with or without pay) while a grievance process is pending, without needing to meet the emergency removal standards.

g) 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 Pool members 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 Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the MTC President.

h) Notice of Participation

MTC will provide, to a party whose participation is invited or expected, written notice of

the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

i) Preservation of Records/Recordkeeping

MTC will maintain for a period of at least seven (7) years records of:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
2. Any disciplinary sanctions imposed on the Respondent;
3. Any remedies provided to the Complainant designed to restore or preserve equal access to MTC's education program or activity;
4. Any Appeal and the result therefrom;
5. Any Informal Resolution and the result therefrom;
6. All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. MTC will make these training materials publicly available on MTC's website; and
7. Any actions, including any supportive measures, taken in response to a report or Formal Complaint of sexual harassment, including:
 - a. The basis for all conclusions that the response was not deliberately indifferent;
 - b. Any measures designed to restore or preserve equal access to MTC's education program or activity; and
 - c. If no supportive measures were provided to the Complainant, documentation of the reasons why such a response was not clearly unreasonable in light of the known circumstances.

MTC will also maintain any and all records in accordance with state and federal laws.

j) Privacy of the Resolution Process

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with MTC policy. Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, with the exception of information the parties agree not to disclose related to an Informal Resolution. MTC encourages parties to discuss any sharing of information with their Advisors before doing so.

k) Remedies

Following the conclusion of the resolution process, where a determination of responsibility of sexual harassment has been made against the Respondent, remedies may be directed to the Complainant to restore or preserve equal access to MTC's education program or activity. Remedies may consist of supportive measures, but remedies may also include actions that in fact burden the Respondent or are punitive or disciplinary in nature. The Title IX Coordinator is responsible for effective implementation of any remedies.

MTC will maintain the privacy of any remedies, provided privacy does not impair MTC's ability to provide these services.

These remedies may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the individual and/or the community
- Permanent alteration of work arrangements for employees
- Climate surveys
- Policy modification and/or training
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

l) Revision of Policy 117 and Procedures

Policy 117 and Procedures supersede any previous policy(ies) addressing harassment, sexual misconduct and/or retaliation under Title IX and will be reviewed and updated annually by the Title IX Coordinator. MTC reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in Policy 117 and procedures.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

Policy 117 and procedures are effective August, 14 2020.

m) Statement of Rights of the Parties

Please read [Appendix C](#) for a Statement of Rights of the Parties.

n) Withdrawal or Resignation While Charges Pending

1. Students:

Should a student Respondent withdraw or leave with unresolved allegations pending, the resolution process may continue. If a student Respondent wishes to return to MTC, any disciplinary sanctions imposed as a result of the resolution

process outcome will be enforced. The Title IX Coordinator will maintain records of any sanctions imposed as a result of the resolution process in the permanent file.

MTC will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged sexual harassment.

2. Employees:

Should an employee Respondent resign or exit employment with unresolved allegations pending, the resolution process may continue. If an employee Respondent seeks reemployment, any disciplinary sanctions imposed as a result of the resolution process outcome will be enforced. The Title IX Coordinator and the Director of Human Resources will maintain records of any sanctions imposed as a result of the resolution process in the permanent file.

MTC will continue to address and remedy any systemic issues or concerns that contributed to the alleged violation(s), and any ongoing effects of the alleged sexual harassment.

PROCESS A²

1. Meeting with the Complainant

Upon receipt of a Formal Complaint, the Title IX Coordinator works with the Complainant to make sure the Formal Complaint is correctly completed, provides supportive measures (as described in Policy 117), if not already done, and explains the Grievance Process.

2. Initial Assessment

The Title IX Coordinator reviews the Formal Complaint for applicability under Policy 117. The Title IX Coordinator shall determine whether the conduct alleged, if taken as true, would constitute sexual harassment as defined in Policy 117, and if the allegations contained in the Formal Complaint occurred in MTC's education program or activity.

If the Title IX Coordinator determines that Policy 117 does not apply to some aspects of the Formal Complaint or to the Formal Complaint in its entirety, and therefore, those aspects will be "dismissed", the parties will be notified through the NOIA. The parties have the right to appeal the Dismissal ([Appendix D](#)) as described in the Appeal process ([Appendix E](#)).

Please note that dismissing aspects of a Formal Complaint or a Formal Complaint in its entirety under Title IX is solely a procedural requirement under Title IX and does not limit MTC's authority to address the Formal Complaint with an appropriate process and remedies. For the aspects of the Formal Complaint that do not fall under Policy 117, the Title IX Coordinator will assess which policies/procedures may apply. If another policy and/or procedure apply, the matter will be referred for action under the appropriate policy and/or procedure which will be referenced as Process B.

3. Notice of Investigation of Allegations (NOIA) –

After reviewing the Formal Complaint and the Grievance Process with the Complainant and completing the initial assessment, the Title IX Coordinator will provide written notice of the investigation and allegations (the "NOIA") to the Respondent. This facilitates the Respondent's ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- MTC's Grievance Process for allegations of violations of MTC Policy 117, including, if applicable, any Informal Resolution process (a copy of this procedure is to be provided),
- A meaningful summary of all the allegations of sexual harassment potentially constituting sexual harassment as defined in Policy 117,
- The identity of the involved parties in the incident (if known),
- The conduct allegedly constituting sexual harassment under Policy 117,

² Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution.

- The date and location of the alleged incident(s) (if known),
- A statement that MTC presumes the Respondent is not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Grievance Process,
- Information on the need for each party to have an Advisor of their choosing, who may be, but is not required to be, an attorney and suggestions for ways to identify an Advisor, and
- A statement informing the parties that MTC's policy 117 and MTC Catalog and Student Handbook (General Student Conduct) prohibits knowingly making false statements, including knowingly submitting false information during the resolution process.

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

The NOIA and any amendments or updates will be made simultaneously to the parties in writing and may be delivered by one or more of the following methods: in person, emailed to the parties' MTC-issued email, or mailed to the local or permanent address(es) of the parties as indicated in official MTC records. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

4. Informal Resolution Option

If an Informal Resolution option is requested by either the Complainant or the Respondent, the Title IX Coordinator assesses whether the Formal Complaint is suitable for Informal Resolution. If the Title IX Coordinator determines an Informal Resolution is viable, the Title IX Coordinator will determine if both parties are willing to engage in Informal Resolution.

Informal Resolution process and options are in [Appendix F](#).

5. Formal Resolution

a) Grievance Process Pool

The Formal Grievance Process relies on a pool of individuals ("the Pool") to carry out the process. The Grievance Process Pool includes any Investigator and Decision-maker(s) who may perform any or all of these roles (though not at the same time or with respect to the same case).

Pool members are appointed by the Title IX Coordinator. The Pool acts with independence and impartiality.

b) Resolution Timeline

MTC will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) day time period, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how

much additional time will be needed to complete the process.

c) Temporary Delays and Extension of Time For Good Cause in the Resolution Process

MTC may undertake a short delay or provide an extension of time in its resolution process (several days to a few weeks) for good cause. Such circumstances may include but are not limited to: the absence of a party, a party's Advisor, or a witness; concurrent law enforcement activity with law enforcement asking to temporarily delay the Grievance Process; or the need for accommodation of disabilities.

MTC will communicate in writing the time extension or anticipated duration of the delay and the reason to the parties and provide the parties with status updates if necessary. MTC will promptly resume the resolution process as soon as feasible. During such a delay, MTC will implement supportive measures as deemed appropriate.

MTC action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

d) Appointment of Investigators

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints an Investigator to conduct the investigation, usually within two (2) days of determining that an investigation should proceed.

e) Objective Evaluation of Evidence

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.

MTC operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

f) Investigation Timeline

Investigations are completed expeditiously, normally within thirty (30) days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

MTC will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

g) Steps in the Investigation Process

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses and obtaining available and relevant evidence.

MTC will ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on MTC and not on the parties provided that MTC cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless MTC obtains that party's voluntary, written consent to do so for the Grievance Process.

All parties have an equal opportunity, through the investigation process, to present witnesses, including fact and expert witnesses, to provide inculpatory and exculpatory evidence, and to fully review and respond to all evidence on the record. MTC will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.

The Investigator takes the following steps, if not already completed (not necessarily in this order):

- Identify all policies implicated by the alleged misconduct
- 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
- Provide, to a person whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of the investigative interview with sufficient time for the person to prepare to participate
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Gather, assess, and synthesize evidence, but make no conclusions and render no recommendations as part of their report
- Perform an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and provide that credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness
- Provide regular status updates to the parties throughout the investigation
- Write an Initial Investigation Report fully summarizing the investigation, all witness interviews, and fairly addressing all relevant evidence and provide the report to the parties and the parties' Advisor, if any, for review and a written response
- The Initial Investigation Report must provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including the evidence upon which MTC does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source,

- so that each party can meaningfully respond to the evidence prior to conclusion of the investigation
- MTC will send to each party and the party's Advisor, if any, the Initial Investigation Report and evidence subject to inspection and review in an electronic format or a hard copy, and the parties will have at least 10 days to submit a written response, which the Investigator will consider prior to completion of the Final Investigation Report. The parties may elect to waive the full ten days
 - MTC will also make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination
- The Investigator may elect to respond in writing in the Initial Investigation Report to the parties' submitted responses and/or to share the responses between the parties for additional responses
 - The Investigator 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 should document all rationales for any changes made after the review and comment period
 - The Investigator shares the report with the Title IX Coordinator for their review and feedback
 - The Investigator will incorporate any relevant feedback and additional relevant evidence (if applicable), and the Final Investigation Report is then shared with all parties and their Advisors, if any, through secure electronic transmission or hard copy at least ten (10) days prior to a hearing

h) Role and Participation of Witnesses in the Investigation

Witnesses (as distinguished from the parties) who are employees of MTC are expected to cooperate with and participate in MTC's 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 (e.g., clinical placement, summer break) may require individuals to be interviewed remotely. Zoom, Microsoft Teams, FaceTime, or similar technologies may be used for interviews if the Investigator determines that timeliness or efficiency dictate a need for remote interviewing. MTC will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

i) Recording of Interviews

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If the Investigator elects to audio and/or video record interviews, all involved parties must be made aware of audio and/or video recording.

j) Evidentiary Considerations in the Investigation

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.

k) Referral for Hearing

Provided that the Formal 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 hearing cannot be less than ten (10) days from the conclusion of the investigation – when the Final Investigation Report is transmitted to the parties and the Hearing Decision-maker—unless all parties and the Decision-maker agree to an expedited timeline.

The Title IX Coordinator will select an appropriate Hearing Decision-maker.

l) Hearing Decision-maker Composition

MTC will designate a single Decision-maker. The single Decision-maker will also Chair the hearing.

The Decision-maker will not have had any previous involvement with the investigation. The Title IX Coordinator may elect to have an alternate Decision-maker sit in throughout the hearing process in the event that a substitute is needed for any reason.

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 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.

m) Evidentiary Considerations in the Hearing

Any evidence that the Decision-maker determines 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 disciplinary sanction upon a determination of responsibility. This information is only considered at the disciplinary sanction stage of the process and is not shared until then.

After post-hearing deliberation, the Decision-maker renders a determination based on the preponderance of the evidence, whether it is more likely than not that the Respondent violated the Policy as alleged.

n) Notice of Hearing

No less than ten (10) days prior to the hearing, the Title IX Coordinator will send notice of the hearing to the parties. Once mailed, 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 disciplinary sanctions 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 and parties to simultaneously see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) 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 five (5) 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, and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-maker. For compelling reasons, the Decision-maker or Title IX Coordinator 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 MTC will appoint one. Each party must have an Advisor present. There are no exceptions.
- A copy of all the materials that will be provided to or have been provided to the Decision-maker about the matter, unless they have been provided already.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations that may be needed at the hearing, at least seven (7) days prior

- to the hearing.
- Whether parties can/cannot bring mobile phones/devices into the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to Policy 117) 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 followed by MTC and remain within the 60-90 day goal for resolution.

o) Alternative Hearing Participation Options

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator at least five (5) days prior to the hearing.

The Title IX Coordinator can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator know at least five (5) days prior to the hearing so that appropriate arrangements can be made.

p) Preparation for the Hearing

The Title IX Coordinator, after any necessary consultation with the parties and the Pool, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the Final Investigation Report to the parties at least ten (10) days prior to the hearing, if not already done.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator, 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 the name of the Decision-maker at least ten (10) 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 five (5) 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 a list of the names of all parties, witnesses, and Advisors at least five (5) 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.

q) Pre-Hearing Meetings

The Chair may, but is not required to, convene a pre-hearing meeting(s) with the parties and their Advisors to invite them to submit the questions or topics they (the parties and their Advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration based on any new information or testimony offered at the hearing. The Chair must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

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 legal counsel may not be the general legal counsel for MTC.

The pre-hearing meeting(s) will be recorded.

r) Hearing Procedures

At the hearing, the Decision-maker has the authority to hear and make determinations on all allegations of sexual harassment and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the sexual harassment, even though those collateral allegations may not specifically fall within the Policy.

Participants at the hearing will include the Chair/Decision-maker, the hearing facilitator(s), the Investigator who conducted the investigation, the parties, Advisors to the parties, any called witnesses, the Title IX Coordinator, 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 at a portion of the hearing in order to respond to specific questions from the Decision-maker and the parties and will then be excused.

s) Joint Hearings

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the

default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

t) The Order of the Hearing – Introductions and Explanation of Procedure

The Chair explains the procedures and introduces the participants. The Chair with assistance from the hearing facilitator then conducts the hearing according to the hearing script.

Elements at the hearing to include, but not limited to, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing are managed by the hearing facilitator(s). The hearing facilitator(s) may also attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

u) Investigator Presents the Final Investigation Report

The Investigator will then present a summary of the Final Investigation Report and will be subject to questioning by the Decision-maker and the parties (through their Advisors). The Investigator will be present during the entire hearing process, but not during deliberations.

Neither the parties nor the Decision-maker should ask the Investigator their opinions on credibility, recommended findings, or determinations, and the Investigator, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

v) Testimony and Questioning

Once the Investigator presents their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Decision-maker and then by the parties through their Advisors (“cross-examination”). The Decision-maker must permit each party’s Advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. All questions will be subjected to a relevance determination by the Chair.

The Advisor, who will remain seated during questioning, will pose the proposed question directly, orally, and in real time, the proceeding will pause to allow the Chair to consider it, and the Chair will determine whether the question will be permitted, disallowed, or rephrased. The Chair may invite explanations or persuasive statements regarding relevance with the Advisors, if the Chair so chooses. The Chair will then state their

decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance. The Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Chair has ruled on a question.

w) Refusal to Submit to Cross-Examination and Inferences

Each party's advisor must be permitted to conduct cross-examination at the live hearing. The Hearing Decision-maker must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.

If a party or a witness does not attend the hearing or they attend the hearing but refuse to answer a relevant question asked during cross-examination, it will be deemed that the party or the witness "did not submit to cross-examination". The Decision-maker may not rely on any statement made by a party or a witness who "does not submit to cross examination" in the ultimate determination of responsibility. Evidence provided that is something other than a statement by the party or the witness may be considered.

Questions asked by a Decision-maker to a party or a witness are not considered cross-examination; cross-examination may only be conducted by a party's advisor. If a party or a witness refuses to answer a question from the Decision-maker, statements made by the party or the witness will be admissible as long as the party or the witness is willing to submit to cross-examination and answers all relevant questions during cross-examination, if any are asked.

The Decision-maker may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

If charges of policy violations other than sexual harassment are considered at the same hearing, the Decision-maker may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

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

³ "Any statement by a party or a witness" also includes statements made by the party or the witness to any other source. (e.g. If a Complainant "does not submit to cross-examination", and Witness A states that Complainant said "X" then "X" cannot be relied on by the Decision-maker in the ultimate determination of responsibility).

x) Recording Hearings

Hearings (but not deliberations) are recorded by MTC for purposes of review in the event of an Appeal. If a recording is not feasible, a transcript will be made. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-maker, the parties, their Advisors, and appropriate administrators of MTC will be permitted to listen to the recording or review the transcript 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 or transcript without permission of the Title IX Coordinator.

y) Deliberation, Decision-making, and Standard of Proof

The Decision-maker will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. The preponderance of the evidence standard of proof is used.

The Decision-maker 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, and credibility assessments.

This report must be submitted to the Title IX Coordinator within two (2) days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

If the Decision-maker determines the Respondent is responsible for the policy violation(s) in question, the Title IX Coordinator will determine any remedies and start the disciplinary sanction process as described in [Appendix B](#).

z) Notice of Outcome

Using the Hearing Decision-maker's deliberation statement and the Disciplinary Sanctions Decision-maker's disciplinary sanction(s), if any, the Title IX Coordinator will work with the Decision-maker to prepare a Notice of Outcome which will include the following:

1. Identification of the allegations potentially constituting sexual harassment as defined by Policy 117;
2. Identification of violation(s) covered by other MTC policies that were part of the hearing;
3. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
4. Findings on each alleged policy violation (findings of fact supporting the

- determination);
5. Conclusions regarding the application of the relevant policy to the facts at issue;
 6. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
 7. A statement of, if any, disciplinary sanctions MTC will impose on the Respondent;
 8. A statement of whether remedies designed to restore or preserve equal access to MTC's education program or activity will be provided by MTC to the Complainant (the details or specifics of the remedies are not shared with the Respondent unless the remedy directly relates to the Respondent);
 9. MTC's procedures and permissible bases for the Complainant and Respondent to appeal; and
 10. Information on when the results are considered by MTC to be final.

The Title IX Coordinator will then simultaneously share the Notice of Outcome with the parties and their Advisors within seven (7) days of receiving the Decision-maker's deliberation statement. 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 MTC records, or emailed to the parties' MTC-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

APPENDIX A: ADVISORS

Right to an Advisor

The parties may each have an Advisor³ of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.⁴

1. Who Can Serve as an Advisor

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses.

The parties may choose Advisors from inside or outside of the MTC community. The Title IX Coordinator will also offer to assign an Advisor for any party if the party so chooses. MTC cannot guarantee equal advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, MTC is not obligated to provide an attorney.

2. Advisor's Role

Parties have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing. Parties must have an Advisor during the hearing process.

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

Under U.S. Department of Education regulations under Title IX, a form of indirect questioning is required during the hearing but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, MTC will appoint an Advisor for the limited purpose of conducting any questioning of the other party and witnesses.

A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party's Advisor will not conduct questioning, MTC will appoint an Advisor who will do so, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses may also be conducted by the Decision-maker during the hearing.

³ The law permits one Advisor for each party (witnesses are not entitled to Advisors within the process, though they can be advised externally).

⁴ "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

All Advisors are subject to the same MTC policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address MTC officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee during any meeting or proceeding, and the Advisor may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s) except during a hearing proceeding, during cross-examination.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this procedure will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting or proceeding will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

3. Sharing Information with the Advisor

MTC expects that the parties may wish to have MTC share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

MTC also provides a consent form that authorizes MTC to share such information directly with their Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before MTC is able to share records with an Advisor.

If a party requests that all communication be made through their attorney Advisor, MTC will not comply with that request.

4. Privacy of Records Shared with Advisor

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by MTC. MTC may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by MTC's privacy expectations.

5. Expectations of an Advisor

MTC generally expects an Advisor to adjust their schedule to allow them to attend MTC meetings when planned, but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

MTC may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

6. Expectations of the Parties with Respect to Advisors

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) days before the hearing.

APPENDIX B: DISCIPLINARY SANCTIONS

If the Respondent is determined responsible for the allegation(s) of sexual harassment as a result of the resolution process, the Title IX Coordinator appoints a Disciplinary Sanctions Decision-maker to determine what, if any, disciplinary sanctions are to be imposed upon the Respondent.

Factors considered by the Disciplinary Sanctions Decision-maker when determining a disciplinary sanction may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for disciplinary sanctions to bring an end to the sexual harassment
- The need for disciplinary sanctions to prevent the future recurrence of sexual harassment
- The need to remedy the effects of the sexual harassment on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant

The disciplinary sanction(s) determined by the Disciplinary Sanctions Decision-maker will be provided to the Title IX Coordinator for the Hearing Decision-maker to include in the Notice of Outcome.

The disciplinary sanction(s) will be implemented as soon as is feasible, either upon the outcome of any Appeal or the expiration of the window to Appeal without an Appeal being requested.

All Respondents are expected to comply with the assigned disciplinary sanctions within the timeframe specified in the Notice of Outcome. Failure to abide by the disciplinary sanction(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional disciplinary sanction(s), including suspension, expulsion, and/or termination from MTC. A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

The disciplinary sanction(s) described in this Procedure are not exclusive of, and may be in addition to, other actions taken or disciplinary sanctions imposed by external authorities. Disciplinary sanctions may include:

a. Student Disciplinary Sanctions

The following are the usual disciplinary sanctions that may be imposed upon students or organizations singly or in combination:

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any MTC policy, procedure, or directive will result in more

severe disciplinary sanctions.

- *Required Counseling:* A mandate to meet with and engage in counseling to better comprehend the misconduct and its effects.
- *Conduct Probation:* A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Conduct Suspension:* Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on conduct probation through the remainder of their tenure as a student at MTC.
- *Expulsion:* Permanent termination of student status and revocation of rights to be on campus for any reason or to attend MTC-sponsored events.
- *Organizational Disciplinary Sanctions:* Deactivation, loss of recognition, loss of some or all privileges (including MTC registration) for a specified period of time.
- *Other Actions:* In addition to or in place of the above disciplinary sanctions, MTC may assign any other disciplinary sanctions as deemed appropriate.

b. Employee Disciplinary Sanctions

Disciplinary sanctions for an employee who has engaged in sexual harassment may include:

- *Warning – Verbal or Written*
- *Performance Improvement Plan*
- *Enhanced supervision, observation, or review*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Loss of Oversight or Supervisory Responsibility*
- *Transfer*
- *Reassignment*
- *Assignment to new supervisor*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above disciplinary sanctions, MTC may assign any other disciplinary sanctions as deemed appropriate.

APPENDIX C: STATEMENT OF RIGHTS OF THE PARTIES

- The right to an equitable investigation and resolution of all credible allegations of prohibited sexual harassment reported to the Title IX Coordinator or an OWA.
- The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible disciplinary sanctions.
- The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) or to clarify potentially implicated policy violations.
- The right not to have any personally identifiable information released to the public without consent provided, except to the extent permitted by law.
- The right to be treated with respect by MTC officials and the Title IX Team.
- The right to have MTC policies and procedures followed without material deviation.
- The right not to be pressured to informally resolve any reported sexual harassment.
- The right not to be discouraged by MTC officials from reporting sexual harassment to both on-campus and off-campus authorities.
- The right to be informed by MTC officials of options to notify proper law enforcement authorities, and the option(s) to be assisted by MTC authorities in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report, as well.
- The right to have allegations of violations of this Policy responded to promptly and with sensitivity by MTC.
- The right to be informed of available interim actions and supportive measures.
- The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible.
- The right to ask the Investigator(s) and Decision-maker(s) to identify and question relevant witnesses, including expert witnesses.
- The right to provide the Investigator(s)/Decision-maker(s) with a list of questions that, if deemed relevant by the Investigator(s)/Chair, may be asked of any party or witness.
- The right not to have irrelevant prior sexual history or character admitted as evidence.
- The right to know the relevant and directly related evidence obtained and to respond to that evidence.
- The right to a fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
- The right to receive a copy of the investigation report, including all factual, policy, and/or credibility analyses performed, and all relevant and directly related evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law, prior to the hearing, and the right to have at least ten (10) days to review the report prior to the hearing.

- The right to respond to the investigation report, including comments providing any additional relevant evidence after the opportunity to review the investigation report, and to have that response on the record.
- The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
- The right to regular updates on the status of the investigation and/or resolution.
- The right to have reports of alleged Policy violations addressed by Investigators, Title IX Coordinators, and Decision-maker(s) who have received relevant training.
- The right to preservation of privacy, to the extent possible and permitted by law.
- The right to meetings, interviews, and/or hearings that are closed to the public.
- The right to petition that any Title IX Team member in the process be recused on the basis of disqualifying bias and/or conflict of interest.
- The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process.
- The right to the use of the appropriate standard of evidence, preponderance of the evidence, to make a finding after an objective evaluation of all relevant evidence.
- The right to be present, including presence via remote technology, during all testimony given and evidence presented during any formal resolution hearing.
- The right to be promptly informed in a written Notice of Outcome letter of the finding(s) and disciplinary sanction(s) of the resolution process and a detailed rationale of the decision, delivered simultaneously (without undue delay) to the parties.
- The right to be informed in writing of when a decision by MTC is considered final and any changes to the disciplinary sanction(s) that occur before the decision is finalized.
- The right to be informed of the opportunity to appeal the finding(s) of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by MTC.
- The right to a fundamentally fair resolution as defined in these procedures.

APPENDIX D: DISMISSAL (MANDATORY AND DISCRETIONARY)⁵

Upon any dismissal, MTC will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

This dismissal decision is appealable by any party under the procedures for appeal in [Appendix E](#).

1. Mandatory Dismissal

MTC must dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- a) The conduct alleged in the Formal Complaint would not constitute sexual harassment as defined in Policy 117, even if proved; and/or
- b) The conduct did not occur in an educational program or activity controlled by MTC (including buildings or property controlled by recognized student organizations), and/or MTC does not have control of the Respondent; and/or
- c) The conduct did not occur against a person in the United States; and/or
- d) At the time of filing a Formal Complaint, a Complainant is not participating in or attempting to participate in the education program or activity of MTC.⁶

2. Discretionary Dismissal

MTC may dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing:

- a) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein; or
- b) The Respondent is no longer enrolled in or employed by MTC; or
- c) Specific circumstances prevent MTC from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

A Complainant who decides to withdraw a Formal Complaint may later request to reinstate it or refile it.

⁵ These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45.

⁶ Such a Complainant may still receive supportive measures, but the formal grievance process is not applicable.

APPENDIX E: APPEALS

1. Request for Appeal

MTC will implement appeal procedures equally for both parties. Any party may file a Request for Appeal for:

- a) A *determination regarding responsibility* as a result of the Formal Resolution process (as stated in the Notice of Outcome); or
- b) MTC's *dismissal* of a Formal Complaint or any allegations therein.

The Request for Appeal must be submitted in writing to the Title IX Coordinator within five (5) days of the Notice of Outcome or of notice of the dismissal. The Request for Appeal must include the reasons the party is appealing the *determination regarding responsibility* or the *dismissal* decision and evidence supporting the request.

Upon receiving a Request for Appeal, the Title IX Coordinator will –

- a) Designate an Appeal Decision-maker. MTC will ensure that the Appeal Decision-maker is not the same person as the Decision-maker that reached the determination regarding responsibility or dismissal, the Investigator, or the Title IX Coordinator.
- b) Notify the other party of the Appeal in writing and provide a copy of the Request for Appeal to that party within two (2) days of the Request for Appeal being filed.
- c) Forward the Request for Appeal within five (5) days of receiving the Request for Appeal to the Appeal Decision-maker for a Review for Standing to determine if the request meets the requirements to move forward as an Appeal.

2. Review for Standing

This Review for Standing is not a review of the merits of the appeal, but solely a determination as to whether the Request for Appeal meets the grounds for appeal and is timely filed so that the Appeal can move forward. The Appeal Decision-maker will complete the Review for Standing within three (3) days of receiving the Request for Appeal.

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 regarding responsibility or dismissal was made, that could affect the outcome of the matter; or
- c) The Title IX Coordinator, Investigator, or Decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

Request for Appeals will be denied if either of the following apply:

- a) The Request for Appeal is not submitted in writing to the Title IX Coordinator within five (5) days of the delivery of the Notice of Outcome or the notice of the dismissal.
- b) None of the grounds in the Request for Appeal meet the Grounds for Appeal as stated above as determined by the Appeals Decision-maker.

Request for Appeals will be approved if the following applies:

- a) The Request for Appeal is submitted in writing to the Title IX Coordinator within five (5) days of the delivery of the Notice of Outcome or the notice of the dismissal, and
- b) Any of the grounds in the Request for Appeal meet the Grounds for Appeal as stated above as determined by the Appeals Decision-maker.

Parties and their Advisors, if any, will be promptly notified in writing of the denial or the approval of the Request for Appeal and the rationale. Notification will be made simultaneously and may be delivered in person, emailed to the parties' MTC-issued email, or mailed to the local or permanent address(es) of the parties as indicated in official MTC records. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

Parties will be given a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome of the Review for Standing. Parties will be given three (3) days to review and submit a response to the portion of the Review for Standing that was denied or approved and involves them. All responses to the Review for Standing will be forwarded by the Appeal Decision-maker to all parties.

Upon reviewing the Review for Standing and all written statements submitted by the parties in the 3-day review period, the Appeal Decision-maker will either Dismiss the Request for Appeal or move the Request for Appeal forward as an Appeal. Decisions by the Appeal Decision-maker to Dismiss the Request for Appeal are final.

3. Appeal

An Appeal is a review of the merits of the appeal – the reasons and evidence provided in the Request for Appeal.

The Appeal Decision-maker will collect any additional information needed and all documentation regarding the Request for Appeal, the Review for Standing, and the subsequent written statements/responses by the parties. The Appeal Decision-maker will render a decision (Appeal Outcome) in no more than five (5) days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.

Notification of the Appeal Outcome will be sent to all parties in writing including the decision on each ground and rationale for each decision. Notification will be made simultaneously and may be delivered in person, emailed to the parties' MTC-issued email, or mailed to the local or permanent address(es) of the parties as indicated in official MTC records. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Appeal Outcome is final.

4. Disciplinary Sanctions Status During the Appeal

Any disciplinary sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be continued or implemented.

If any of the disciplinary sanctions are to be implemented immediately post-hearing, but pre-appeal, then Emergency Removal procedures must be followed.

5. Appeal Considerations

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and making changes to the disciplinary sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or disciplinary sanction(s).
- The Appeal Decision-maker may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigator and/or Decision-maker 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 disciplinary sanction is changed on remand (except in the case of a new hearing).
- In rare cases where a procedural or substantive error cannot be cured by the original Decision-maker (as in cases of bias), the appeal may order a new hearing with a new Decision-maker.
- The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases in which the appeal results in reinstatement to MTC 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.

APPENDIX F: INFORMAL RESOLUTION⁷

1. When Can an Informal Resolution Process Be Used?

Informal Resolution will only be offered if a Formal Complaint is filed, if it is done prior to reaching a determination regarding responsibility through the Formal Resolution process, and if the Title IX Coordinator approves. Informal Resolution is not a required component of the Grievance Process, and at no time will parties be pressured or required to pursue an Informal Resolution first in order to pursue a Formal Resolution.

Informal resolution may be appropriate when parties agree to the Informal Resolution process, and the process is approved by the Title IX Coordinator after evaluating the circumstances. At no time can an Informal Resolution process be used as the grievance (resolution) process for allegations that an employee sexually harassed a student; the Formal Resolution process must apply.

2. Starting the Informal Resolution Process

To request Informal Resolution, the Complainant or Respondent who wishes to initiate the Informal Resolution should contact the Title IX Coordinator.⁸ Within two (2) days of receiving the request, the Title IX Coordinator will review to see if an Informal Resolution process is viable under the circumstances, and if yes, the Title IX Coordinator will contact the other party to see if they, too, would like to pursue an Informal Resolution.

Within two (2) days of determining that the parties are interested in the Informal Resolution process, the Title IX Coordinator will send the Informal Resolution Request paperwork to the parties to obtain each party's signed voluntary, written confirmation that they wish to resolve the matter through the Informal Resolution process. The Informal Resolution Request will include written notice of the reported misconduct and any disciplinary sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by MTC.

The Informal Resolution Request will also inform the parties that any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Resolution process. The parties will have five (5) days to return the signed Informal Resolution Request. Upon return of the signed Informal Resolution Request by all parties, the Informal Resolution process begins.

3. The Informal Resolution Process

The Informal Resolution process will commence with an Informal Resolution Facilitator

⁷ MTC will 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 Formal Resolution of Formal Complaints of sexual harassment.

⁸ The Title IX Coordinator may also reach out to the parties to see if an Informal Resolution process is agreed upon when the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, and the Title IX Coordinator determines that an Informal Resolution is appropriate.

within five (5) days of receipt of all parties' signed Informal Resolution Requests.

The Informal Resolution process can include two different approaches:

a) Negotiated Resolution

Negotiated Resolution is when the Title IX Coordinator, with the consent of the parties, negotiates and implements a mutually agreed upon resolution to resolve the allegations that satisfies all parties and MTC.

The Title IX Coordinator may look to the following factors to assess whether Negotiated Resolution is appropriate:

- The parties' amenability to the Negotiated Resolution option;
- Likelihood of potential resolution, taking into account any power dynamics between the parties;
- The parties' motivation to participate;
- Civility of the parties;
- Results of a violence risk assessment/ongoing risk analysis;
- Disciplinary history;
- Whether an emergency removal is needed;
- Formal Complaint complexity;
- Emotional investment/capability of the parties;
- Rationality of the parties; and/or
- Goals of the parties

b) Respondent Accepts Responsibility for Alleged Violations

This method may be used if the Respondent indicates an intent to accept responsibility for all of the alleged misconduct in the Formal Complaint, the Respondent agrees to the disciplinary sanctions, if any, and the Complainant agrees to the outcome.

The ultimate determination of which approach to use is to be made by the Title IX Coordinator.

4. Informal Resolution Outcome

The ultimate determination of whether the Informal Resolution is successful (the Formal Complaint is resolved) is to be made by the Title IX Coordinator. The Title IX Coordinator will determine whether all parties and MTC are able to agree on the outcome of the Informal Resolution process.

If yes, within five (5) days, the outcome will be provided in writing to the parties through an Informal Resolution Agreement. The Informal Resolution Agreement will include all that

apply – acknowledgment of responsibility by the Respondent for allegations, any disciplinary sanctions imposed on the Respondent, and whether remedies designed to restore or preserve equal access to MTC’s education program or activity will be provided by MTC to the Complainant (the details or specifics of the remedies are not shared with the Respondent unless the remedy directly relates to the Respondent).

The parties must sign the Informal Resolution Agreement showing their intent to be bound by the terms of the Agreement. The signed Informal Resolution Agreement must be returned to the Title IX Coordinator by all parties within three (3) days of delivery, or the Informal Resolution process will cease, and the Formal Resolution will resume at the same point where it was paused. The Informal Resolution Outcome becomes final upon the return of the signed Informal Resolution Agreement, if done within the required timeframe by all parties.

5. Disciplinary Sanctions and Remedies

When an Informal Resolution is final, the appropriate disciplinary sanction(s) and/or remedies are promptly implemented in order to effectively stop the sexual harassment, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

Failure to abide by the Informal Resolution Agreement may result in additional disciplinary actions.

6. Appeals Not Allowed

The final result of an Informal Resolution process is not subject to appeal once all parties indicate their written assent to all agreed upon terms of the Informal Resolution in the Informal Resolution Agreement. When the parties cannot agree on all terms of the Informal Resolution, the Formal Resolution process will resume at the same point where it was paused.

7. Recordkeeping

Records of the Informal Resolution will be maintained per the Preservation of Records/ Recordkeeping section of this procedure, as applicable.

ATIXA 2020 INTERIM MODEL SEXUAL HARASSMENT POLICIES AND PROCEDURES
USE AND ADAPTATION OF THIS MODEL WITH CITATION TO ATIXA IS PERMITTED
THROUGH A LIMITED LICENSE
TO MTC.
ALL OTHER RIGHTS RESERVED.
©2020. ATIXA



Mitchell Technical College Procedure 117 - Grievance Process B

GRIEVANCE PROCESS B

When allegations of discrimination and/or harassment do not fall under Policy 117, other policies and procedures may be applicable.

If an allegation is not covered under Policy 117 and Procedure 117 Grievance Process A, the matter may fall under another policy and procedure which will be referred to as Grievance Process B. The Title IX Coordinator will review all claims of discrimination and claims of harassment to determine which MTC policy and procedure applies.

Some of the policies and procedures that may apply include:

- MTC Catalog and Student Handbook
 - Student Rights and Responsibilities
 - Student Life – General Student Conduct
 - Student Life – General Information
 - Mitchell Tech Policies and Administrative Rules
- Board Policy MTC 111 Freedom of Expression
- Board Policy MTC 112 Nondiscrimination Policy
- Board Policy MTC 115 Harassment
- Board Policy MTC 116 Equal Opportunity
- Board Policy MTC 713 Employee Grievance Procedures
- Board Policies MTC 744/976 Appropriate Use of Information Technology Resources
- Board Policy MTC 934 Academic Freedom
- Board Policy MTC 1002 Equal Educational Opportunities
- Board Policy MTC 1036 Non-academic Probation, Suspension, and Expulsion
- Board Policy MTC 1044 Student Due Process
- Board Policy MTC 1045 Student Complaints and Appeals
- Board Policy MTC 1046 Student Discrimination Grievance Policy and Procedures