MONTCLAIR
STATE UNIVERSITY

Title IX Sexual Harassment/Sexual Assault Policy and Procedures	
Responsible Office:	Student Development Campus Life and Human Resources
Policy Summary:	Policies and procedures aimed to address reports made of sexual assault and sexual harassment based upon gender, gender identity, and gender orientation.
Effective Date:	08/14/2020
Last Revision Date:	

I. Purpose

The Title IX Sexual Harassment/Sexual Assault Policy and Procedures are adopted to address reports made of sexual assault and sexual harassment based upon gender, gender identity, and gender orientation.

Scope

The Title IX Sexual Harassment/Sexual Assault Policy and Procedures are adopted to address reports made of sexual assault and sexual harassment based upon gender, gender identity, and gender orientation.

Authority

Title IX of the Educational Amendment Act of 1972, 20 U.S.C. 1681, et. seq.; 34 C.F.R. 106; Violence Against Women Reauthorization Act (VAWA); Board of Trustees Policy 1.1.96, Delegation of Authority to the President of the University.

Individuals Responsible for Implementation

- Deputy Title IX Coordinator, Division for Student Development and Campus Life
- Vice President for Student Development and Campus Life
- Dean of Students, Division for Student Development and Campus Life

- Title IX Coordinator, Institutional Compliance
- Vice President for Human Resources

II. Applicability

This Policy applies to all students enrolled at and employees of Montclair State University.

III. Definitions (as applicable)

"Consent" is defined as informed, voluntary and mutual, and may be withdrawn at any time. Consent is not obtained with express or implied force, intimidation, threat, or duress. Consent to a sexual act must be clearly expressed as an affirmative, unambiguous and conscious decision to engage in sexual contact. Consent to one type of sex act does not imply consent to other forms and must be ongoing throughout a sexual encounter. Past consent to sexual activity does not imply ongoing future consent with a person or consent to the same activity with another person. If a person is mentally or physically incapacitated or impaired so that a person cannot understand the fact, nature or extent of the sexual situation, there is no consent. This includes incapacitation by use of alcohol and/or drug consumption, or being asleep or unconscious.

"Dating Violence" is defined as sexual or other physical assault committed by a person who is or has been in a relationship of a romantic or intimate nature with another person. The existence of such a relationship shall be determined based on a consideration of the following three factors: (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship.

"Domestic Violence" is defined as violence committed by a current or former spouse or intimate partner of a person, by a person with whom the other person shares a child in common, by a person who is cohabitating with or has cohabitated with the other person as a spouse or intimate partner, by a person similarly situated to a spouse of the other person under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or minor who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

"Sexual Harassment" is defined to mean conduct on the basis of gender that satisfies one or more of the following:

a. An employee of the University conditions the provision of aid, benefit or service of the University on an individual's participation in unwelcome sexual conduct;

b. unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person of equal access to the University's education programs or activities; or

c. Sexual Assault; or

d. Dating Violence; or

e. Domestic Violence; or

f. Stalking.

“Sexual Assault” is defined as actual or attempted sexual contact with another person without that person’s consent, or when a person is incapable of giving consent.

“Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

a. fear for his or her safety or the safety of others; or

b. suffer substantial emotional distress.

“Proceeding” is the due process and appeal rights provided to a complainant and respondent in a live hearing pursuant to this Policy.

“Result” is defined as the University’s dismissal of the Complaint or final outcome and determination after the Proceeding.

IV. Policy

Sexual assault and sexual harassment based upon gender, gender identity, and gender orientation is a violation of Federal laws and regulations and the University’s Statement on Equal Opportunity, Affirmative Action, Sexual Harassment and Tolerance. The University’s Title IX Sexual Harassment/Sexual Assault Policy and Procedures are adopted to comply with these laws. Montclair State University is committed to the principles of academic and professional excellence and a positive learning and working environment for its students. The civil and respectful treatment of one another is a foundation of this principle, and sexual harassment and sexual assault will not be tolerated by the University.

The University strives to eliminate harassment through education and encourage reporting. Prompt corrective measures will be taken to stop sexual harassment and protect a person who has reported sexual assault or sexual harassment. Students and employees who violate this policy are subject to disciplinary measures, up to and including dismissal from the University or termination of employment. Any person who believes that they have been the subject of sexual harassment or sexual assault by a student or employee should follow the reporting procedures in this Policy. Complaints should be filed as soon as possible after the alleged incident because late reporting may impede the University’s investigation.

Print copies of the Title IX Sexual Harassment/Sexual Assault Policy and Procedures are available in the Office of the Dean of Students, Division for Human Resources, Sprague Library, Office of Student Belonging, Counseling and Psychological Services, University Police Department, and Student Health Center.

All acts of sexual assault are a form of discrimination prohibited by Title IX and VAWA. Sexual assault is also a criminal act. Therefore, a person has a right to file a criminal complaint and a complaint with the University, simultaneously.

Confidentiality

The University encourages all persons to report incidents of Sexual Harassment and Sexual Assault and to seek help from the resources identified in this Policy.

Individuals employed by the University as a physician, psychologist, nurse practitioner, or assigned to work within the Student Health Center, Office of Student Belonging, Women's Center, or Center for Psychological Services, or acting as professional religious leaders and clergy (collectively "Confidential Employees") are required to hold in confidence reports of conduct that may be Sexual Harassment and Sexual Assault. Students who wish to keep such an incident confidential should seek guidance from the Office of Student Belonging, Women's Center, the Student Health Center, and the Center for Psychological Services or other Confidential Employees. Confidential Employees will refer such matters to the Deputy Title IX Coordinator or Title IX Coordinator, as appropriate, only if authorized by the complainant. In cases of Sexual Harassment, the student may be offered the informal resolution process in this Policy as an alternative to the formal complaint process when the Complaint involves another student, but not an employee.

All employees who are not Confidential Employees and have knowledge or have received a report of Sexual Harassment or Sexual Assault, should report it to the Title IX Coordinator or Deputy Title IX Coordinator, as appropriate. The Title IX Coordinator or Deputy Title IX Coordinator are responsible for implementing supportive measures ("Interim Measures") and corrective measures on behalf of the University. When a matter is reported by an employee other than a Confidential Employee and the person requests confidentiality, the Title IX Coordinator or Deputy Title IX Coordinator will consider whether the request for confidentiality can be honored while still providing a safe environment for all students. Such requests for confidentiality will be weighed against the overall safety of students, and confidentiality will be maintained to the extent possible to protect the privacy interests of those involved. Confidentiality will not be maintained if it would be clearly unreasonable in light of the known circumstances.

Interim/Supportive Measures

The Title IX Coordinator or Deputy Title IX Coordinator will inform the Complainant and Respondent of available Interim Measures and will coordinate Interim Measures for both as appropriate. Interim measures will be offered before the filing of a complaint, during the investigation of a complaint, during a Proceeding and after the Result. Interim Measures shall be designed to be non-disciplinary, non-punitive, individualized supportive services, as reasonably available and free of charge, to the Complainant and Respondent to restore and preserve equal access to the University's education programs and activities without unreasonably burdening the

other party, including measures to protect the safety of both parties, maintaining access to their education, and to deter Sexual Harassment. Interim Measures may include, but not be limited to, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, a change in class or work assignments, living arrangements, dining, transportation, leaves of absence, increased security, and other measures. Interim Measures may also include the provision of resources to both parties including, but not limited to counseling, advocacy, academic support, physical health and mental health services.

Confidential Employees who receive a report of Sexual Assault will discuss with the Complainant the available process for reporting it and request Interim Measures on the student's behalf without reporting the nature of the Sexual Assault. Confidential Employees will work with the student to determine what information they are willing to share with other employees involved in securing Interim Measures. Confidential Employees will also explain to the student how sharing certain information with other employees may initiate the obligation to investigate. Interim Measures provided to the Complainant and Respondent will be kept confidential unless it would impair the University's ability to provide the Interim Measures.

How to File a Complaint

It is a violation of these procedures for anyone to make false accusations of Sexual Harassment or Sexual Assault. Failure to prove a claim of Sexual Harassment or Sexual Assault, however, is not equivalent to making a false accusation. Sanctions may be imposed for intentionally making groundless or malicious accusations of Sexual Harassment or Sexual Assault.

1. Who to Contact

The Title IX Coordinator, or designee, is responsible for investigating complaints involving employees and contractors. The Title IX Coordinator is Director of Institutional Compliance, Paul Apicella, and may be contacted at Montclair State University, Susan A. Cole Hall, 1 Normal Ave, 3rd Floor, Montclair, NJ 07043, or by phone at **973-655-2041**, or by email at **title-ix@montclair.edu**.

The Deputy Title IX Coordinator, or designee, is responsible for investigating complaints involving only students. The Deputy Title IX Coordinator is Associate Dean of Students Yolanda Alvarez, and may be contacted on the University's campus at 1 Normal Avenue, Student Center, Suite 400, Montclair, NJ 07043, or by phone at **973-655-4118**, or by email at **alvarezyo@montclair.edu**.

Any person may report gender discrimination, Sexual Harassment or Sexual Assault at any time to the Title IX Coordinator or Deputy Title IX Coordinator. Reports may be made in person, or by mail, telephone or email using the contact information listed above.

Reports may also be made through the University's **Sexual Misconduct and Title IX webpage**.

2. Representation during the Title IX Investigation

a. Student Advisors

Students have the right to be accompanied by an advisor during the investigation and Proceeding. The advisor may be any individual of the student's choice, including a lawyer, a family member, University faculty or other employee. Advisors may attend meetings with the student, assist a student during the investigation, submit evidence for the student, prepare and submit responses to the investigator and its report, respond to charges filed against the student, attend live hearings, and file an appeal. A student who does not have an advisor for the hearing shall be provided an advisor by the Director of Student Conduct, or designee, to conduct cross examination for the student at the hearing. The advisor assigned to the student may, but is not required to be, an attorney. Any further participation by the advisor in the investigation is at the discretion of the Deputy Title IX Coordinator. Any further participation by the advisor in the student conduct process is at the discretion of the Director of Student Conduct.

b. Employee Advisors

Employees have the right to be accompanied by an advisor of their choice during the investigation and Proceeding. An advisor may be any individual of the employee's choice, including, a lawyer, a family member, University faculty or other employee, or a representative of a union in which the employee is a member. Advisors may attend meetings with the employee during the investigation, submit evidence for the employee, prepare and submit responses to the investigator and its report, respond to charges filed against the employee, attend live hearings, and file an appeal for the employee. An employee who does not have an advisor for the hearing, shall be provided an advisor by the Vice President for Human Resources or their designee, to conduct cross-examination for the employee at the hearing. The advisor assigned to the employee may, but is not required to be, an attorney. Any further participation is at the discretion of the Title IX Coordinator.

3. What to Report

Sexual Harassment and Sexual Assault suffered by an employee or student, or prospective employee or student, while participating in or attempting to participate in an education program or activity at locations within the United States and over which the University or a student organization recognized by the University exercised substantial control over the respondent, event or circumstance, may be reported. Complaints that are received by the Title IX Coordinator or Deputy Title IX Coordinator will be investigated pursuant to this Policy and Procedures.

If Sexual Harassment and Sexual Assault did not occur in the United States, or by an individual or at an event, activity or program over which the University or one of its student organizations had substantial control, the parties will be offered Interim Measures and all other resources available under this Policy. However, the Complaint will not be investigated pursuant to these Policies and Procedures but may be reported to the legal authorities who have jurisdiction over the respondent. Notwithstanding the foregoing, the University is not prohibited from investigating such complaints against employees pursuant to the New Jersey State Policy Prohibiting Discrimination in the Workplace and against students pursuant to the Student Code of Conduct.

4. Formal Complaint Process

a) A complaint may be filed by an individual who is alleged to have been the recipient of conduct that would constitute Sexual Harassment or Sexual Assault. A complaint may also be filed by the Title IX Coordinator or Deputy Title IX Coordinator who has received a report of Sexual Harassment or Sexual Assault. The complaint must specify in detail the nature of the complaint, dates of particular events, names and contact information for witnesses, the name of the individual who has violated this Policy, the remedy requested, and any other relevant information. The complaint must be physically or digitally signed and dated by the complainant.

b) The complaint may be sent to the Title IX Coordinator or Deputy Title IX Coordinator in person, by mail, or by email.

c) When a complaint is filed against a student, it will be investigated by the Deputy Title IX Coordinator or their designee. When a Complaint is filed against an employee or contractor, it will be investigated by the Title IX Coordinator or their designee.

d) Complaints will be acknowledged and promptly investigated, which will include interviews with the complainant, the respondent, and other persons believed to have information relevant to the allegations. All relevant evidence will be objectively evaluated, and credibility determinations will not be based upon a person's status as complainant, respondent or witness. The respondent will be presumed not responsible for the alleged conduct until a determination is made at the conclusion of the Proceeding and the Result is entered. Confidentiality of the investigation will be maintained to the extent possible.

e) The Title IX Coordinator or Deputy Title IX Coordinator, as appropriate, will provide written notice to the respondent of sufficiently detailed allegations within a reasonable time prior to interviews so that the respondent has sufficient time to prepare and meaningfully respond. At a minimum, the respondent will be provided the names of the parties involved, the date and location of the alleged incident(s), and the conduct allegedly constituting Sexual Harassment or Sexual Assault. The written notice shall also include: a) a copy of or link to the webpage for the Sexual Harassment/Sexual Assault Policies and Procedures; b) a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Proceeding; c) that the parties may have an advisor of their choice who may be, but is not required to be, an attorney; d) a statement that the parties and their advisors may inspect and review all evidence; and d) a reference to the provisions within the Title IX Sexual Harassment/Sexual Assault Policy that prohibits knowingly making false statements or knowingly submitting false information during the investigation and Proceeding and prohibits retaliation. If the Title IX Coordinator or Deputy Title IX Coordinator decides to investigate allegations regarding the complainant or respondent that are not included in the complaint or the notice to the respondent, both parties must be notified of the additional allegations to be investigated.

f) The complainant, respondent and any advisors will be provided advance notice of the date, time, location, participants, and purpose of an interview or hearing that is sufficient to permit them to attend, prepare a response and allow their meaningful participation. The complainant, respondent, and advisors will be provided timely and equal access to inspect and review any information obtained as part of the investigation that is related to the allegations in the complaint, including information that will not be relied upon in reaching

a determination and without regard to the source of information. The investigator may not require, allow, rely upon or otherwise use questions or evidence that seek disclosure of information protected under a legally recognized privilege (e.g. priest/penitent, spousal communications, attorney/client, physician/patient, psychologist/patient) unless the person holding the privilege has voluntarily consented in writing to waive it.

g) Complaints of Sexual Harassment against more than one respondent, or by more than one complainant against one or more respondents, or involving multiple complaints by one party against the other party, may be consolidated where the allegations arise out of the same facts and circumstances.

h) The investigation must be completed in a reasonably prompt manner after the complaint is filed, typically within 120 days. The complainant, respondent and their advisors are permitted to discuss the allegations under investigation for the sole purpose of gathering and presenting relevant evidence to the investigator, and shall be provided equal opportunity to present fact and expert witnesses, and other inculpatory and exculpatory evidence to the investigator. The time for completing investigations may vary based upon the particular circumstances. Investigations may occur over a longer period of time where a party, an advisor or a witness is absent or unavailable, there is a need for language assistance or an interpreter, or a person with disabilities requests a reasonable accommodation. Both parties and their advisors will be notified of any anticipated delays in completing an investigation.

i) The Title IX Coordinator or Deputy Title IX Coordinator must dismiss the Complaint if the conduct alleged in the complaint: a) would not constitute Sexual Assault or Sexual Harassment; b) did not occur in the United States; or c) did not occur while participating in or attempting to participate in an education program or activity over which the University or a student organization recognized by the University exercised substantial control over the respondent, event or circumstance. Written notice of dismissal shall be sent promptly to both complainant and respondent simultaneously.

j) The Title IX Coordinator or Deputy Title IX Coordinator may also dismiss the Complaint, or portions of allegations in the Complaint, if at any time during the investigation, the following occurs: a) the complainant requests in writing that the complaint, or portions of the complaint be withdrawn; b) the respondent is no longer enrolled as a student of the University; c) the respondent is no longer employed by the University; or d) specific circumstances prevent the gathering of evidence sufficient to reach a determination on the allegations. Written notice of dismissal shall be sent promptly to both complainant and respondent simultaneously.

k) The determination to dismiss a Complaint shall be made based upon the evidence gathered during the investigation and application of the preponderance of evidence (more likely than not) standard.

l) Complainant may appeal the dismissal of the Complaint in accordance with the Appeal Process.

m) If the Complaint is dismissed by the Title IX Coordinator or the Deputy Title IX Coordinator, charges may be filed against a student for violating the Student Code of Conduct, and/or against an employee by the Division for Human Resources for violating other University

policy, State Policy, applicable governing regulations, and any applicable collective bargaining agreements.

n) Prior to preparation of a report, the complainant, respondent and their advisors shall be provided a copy of all of the evidence gathered by the investigator. The complainant and respondent may respond in writing to the investigator within 10 calendar days of receipt of all evidence. The names and other identifying information of individuals in the report may be redacted if required by the Family Educational Rights and Privacy Act ("FERPA"). Respondent, complainant and their advisors must keep the evidence confidential and not share it with anyone except for the purpose of gathering and presenting relevant evidence to provide to the investigator within the 10-day period. Failure to abide by this confidentiality obligation will subject the complainant, respondent and advisor to disciplinary action by the University.

o) Upon the conclusion of the investigation and the aforementioned 10-day period, a written investigative report will be prepared. The report will summarize the relevant exculpatory and inculpatory evidence, and findings of credibility will be noted. The report shall be provided to the complainant, respondent and their advisors in electronic format or hard copy for review at least 10 days prior to the panel hearing if required. The respondent, complainant and their advisors must keep the investigator's report confidential and not share it with anyone. Failure to abide by this confidentiality obligation will subject the complainant, respondent and advisor to disciplinary action by the University.

p) The Title IX Coordinator will forward its investigative report summarizing its investigation of allegations against an employee to the Vice President for Human Resources or designee. Complainant, respondent, and their advisors may submit written responses to the report to the Vice President for Human Resources within 10 days of their receipt of the report. The Vice President for Human Resources or designee will review the report and may: 1) place the employee on administrative leave; 2) for employees who are not subject to Civil Service Commission Regulations or members of a collective bargaining agreement, terminate the respondent's employment; and/or 3) file charges against the employee for Sexual Harassment and Sexual Assault and schedule a live hearing.

q) The Deputy Title IX Coordinator will forward its investigative report summarizing its investigation of allegations made against a student, to the Director of Student Conduct. The Director of Student Conduct shall consider any written responses received from complainant, respondent and their advisors within 10 days of their receipt of the report. If the Complaint is not dismissed pursuant to paragraphs 9 and 10 above, the Director of Student Conduct shall file charges against the student for Sexual Harassment or Sexual Assault. If the Complaint is dismissed, the Director of Student Conduct may file charges for violating the Student Code of Conduct. Charges filed for Sexual Harassment or Sexual Assault shall be resolved by live hearing.

r) The hearing shall be scheduled no earlier than 10 calendar days after the Vice President for Human Resources or Conduct Officer, or their designees, receive the investigative report.

5. Hearing Process

a) Where the respondent is a student, the hearing officer shall be the Director of Student Conduct, or designee. Where the respondent is an employee, the hearing officer shall be the Chief Human Resources Officer, or designee.

b) The hearing officer will ask the complainant and respondent to provide the names of any advisor who will attend the hearing on their behalf. The complainant and respondent may each have one advisor of their choosing, which may be an attorney. If the complainant or respondent does not have an advisor, the hearing officer shall appoint an advisor to conduct cross-examination on their behalf during the hearing, who may or may not be, an attorney.

c) Prior to the hearing, the hearing officer will review the charges and hearing process with the complainant, respondent and their respective advisor. The respondent may submit a written statement to be used at the hearing. The hearing officer will provide the complainant, respondent and advisors with the names of witnesses and access to evidence gathered by the investigator for use at the hearing.

d) Hearings are confidential and are closed to all but the complainant, respondent, their advisors, the hearing officer presenting the charges, any witnesses called to provide testimony and the hearing panel.

e) The hearing shall be conducted by at least one University administrator but may be conducted by no more than two faculty members, two administrators, and three students (graduate or undergraduate) ("hearing panel"). There will be a chairperson for each hearing panel. Hearing panels that are composed of more than 1 person will be determined by a majority vote of the participating members.

f) Members of the hearing panel shall not have a conflict of interest or bias for or against complainants or respondents generally, or for or against the particular complaint or respondent. Individuals who serve on hearings must be provided training on the definition of Sexual Harassment and Sexual Assault, the scope of and how to conduct hearings under the Sexual Harassment/Sexual Assault Policy and Procedures, how to serve impartially (including by avoiding prejudgment of the facts at issue, conflict of interest and bias), how to use technology during the live hearing, and how to determine questions and evidence is relevant (including when questions about the complainant's sexual predisposition or prior sexual behavior are not relevant).

g) Hearings may be conducted in the same geographic location, or, at the discretion of the hearing officer, virtually using technology that enables the parties, advisors, witnesses, and hearing panel, to simultaneously hear and see each other. At the request of either complainant or respondent, the hearing may also occur with each party located in separate rooms with technology enabling the hearing panel to simultaneously see and hear the party or witness answering questions.

h) The hearing shall be recorded by audio, audiovisual, digital, or transcript, and shall be made available to the parties for inspection and viewing upon request to the hearing officer. Transcripts of recordings shall be paid by the requesting party.

i) The Complainant and the Respondent, as well as their respective advisor, shall be permitted to be present during testimony of all witnesses and presentation of evidence throughout the hearing. Witnesses will be called one at a time, and excused at the conclusion of their testimony.

j) The chairperson will begin the hearing by entering their name into the recording. Additional members of the hearing panel will also enter their names and roles in the record. The complainant, respondent, their advisors, and the hearing officers shall also enter their names into the record.

k) The chairperson will request the respondent to enter a plea of responsible or not responsible to the charges.

l) The hearing officer will provide copies of the complaint, response (if one is provided by respondent), list of witnesses, evidence to be considered, and investigative report to the members of the hearing panel, the complainant, respondent, and their advisors.

m) After the hearing officer has concluded the presentation of evidence and witnesses, the respondent shall be permitted to offer witnesses and evidence.

n) The hearing panel may question the hearing officer.

o) The hearing officer and hearing panel may question any witness, including the respondent or the complainant.

p) The hearing panel shall permit complainant and respondent's advisors to ask complainant, respondent, and any witnesses all relevant questions and follow up questions including those that challenge credibility. Cross-examination must be conducted directly, orally and in real time by the advisor. Cross-examination shall not be permitted by the complainant or respondent except through their advisor. Questions should be submitted in writing preferably 24 hours prior to the hearing to aid the determination of relevance and avoid delays in the hearing.

q) Only relevant questions may be asked of a party or witness on direct or cross-examination. Before a party or witness answers a question, the chairperson for the hearing panel must first determine if the question is relevant and explain the decision to exclude a question as not relevant. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant unless: 1) offered to prove that someone other than respondent committed the conduct alleged by complainant or 2) specific incidents of complainant's prior sexual behavior with respect to respondent are offered to prove consent.

r) Formal rules of evidence that are applicable to civil and criminal trials will not be applicable to the hearing.

s) The presentation of evidence by complainant and respondent, questions directed to participants, and final statements may be constrained to specified time periods when cumulative or as otherwise deemed appropriate by the Chair of the hearing panel.

t) The hearing panel will determine if the respondent has committed Sexual Harassment or Sexual Assault based upon the preponderance of evidence (more likely than not) standard.

u) At the conclusion of all testimony, the chairperson shall provide the hearing officer, complainant or complaint advisor, and respondent or respondent's advisor an opportunity to amplify or clarify any aspect of the information or testimony presented.

v) The hearing panel will prepare a written decision of the Result within 10 business days after the conclusion of the hearing and send it to the hearing officer. The hearing panel's written decision must include the following: a) a summary of the allegations of Sexual Harassment and/or Sexual Assault; b) a summary of the process followed from receipt of the formal complaint through the determination, including notices to the parties, interviews of parties and witnesses, site visits, methods used to gather evidence, evidence considered, and hearings held; c) findings of fact supporting the determination; d) conclusions regarding the application of the Sexual Harassment/Sexual Assault Policy to the facts; e) a statement of and rationale for the Result as to each allegation, including a finding of responsibility, discipline or sanctions imposed upon respondent, and remedies to restore or preserve interim measures to both parties; and f) the process to be followed and bases for appeal of the hearing panel's decision.

w) Both the complainant and the respondent shall be simultaneously informed, in writing, of the Result, the rationale for the Result, sanctions imposed, the University's procedures for both parties to appeal the Result, and when the Result becomes final.

x) If the respondent has a record of prior charges or discipline by University, this information will be made available to the hearing panel after the respondent is found responsible for Sexual Harassment or Sexual Assault to assist in the determination of discipline.

y) Sanctions for students may range from a warning to expulsion and/or referral to the appropriate authorities for criminal prosecution.

z) Sanctions for employees may range from an oral reprimand, to initiation of de-tenuring proceedings and termination of employment, subject to applicable laws and collective bargaining agreements, and/or referral for criminal prosecution.

6. Informal Resolution Process

The University offers an informal resolution process as an alternative to the formal complaint process. Allegations involving students in relationships or dating, or allegations of Sexual Harassment by a student against another student may be resolved by informal resolution. Allegations of Sexual Assault or Sexual Harassment against an employee may not be resolved by informal resolution.

Informal resolution may involve the services of the Campus Mediation Center. Informal resolution requires the voluntary agreement of both parties and focuses on settlement rather than a finding of culpability. The University will not pursue disciplinary action against a student during the informal resolution process. If attempts to resolve the matter during informal resolution are unsuccessful, or if the student or Deputy Title IX Coordinator believe informal resolution is no

longer appropriate, the formal complaint process described above can be utilized at any time. A prerequisite to informal resolution is the filing of a formal complaint.

a) The Title IX Coordinator or Deputy Title IX Coordinator, as applicable, must provide both parties written notice of the allegations, the requirements of the informal resolution process, that either party has the right to withdraw from the informal resolution process and resume the formal complaint process, the consequences of the informal resolution process including preclusion of pursuing a formal complaint for the same allegations, and the records that could be maintained or shared between the parties.

b) The Title IX Coordinator or Deputy Title IX Coordinator, as appropriate, may meet with the parties and their respective advisers separately, together, or both. The purpose of the meeting is to fully disclose the allegations, advise both parties of the options available for resolution, obtain both parties' written consent for informal resolution, clarify issues and attempt to resolve the issues in dispute.

c) If the complaint is resolved, an agreement stipulating the terms of the resolution will be prepared and signed by all parties. Each party will be given a copy of the signed agreement. A copy of the agreement will be retained by the University in accordance with applicable laws and its record retention policies.

d) If the informal resolution process is not successful, the student may resume the formal complaint process.

7. Appeal Process

a) Both complainant and respondent have the right to appeal Interim/Supportive Measures and the Result in writing to the Vice President for Student Development and Campus Life or designee (if the respondent is a student) or to the President of the University or designee (if the respondent is an employee). The designee may not be the person involved in the investigation, the Title IX Coordinator or Deputy Title IX Coordinator or their designees, the hearing officer, or any member of the hearing panel.

b) The appeal must be filed within five (5) business days of the Interim/Supportive Measures and/or Result. If an Appeal is not filed within 5 business days, the Interim/Supportive Measures and Result shall be considered final. The other party shall be notified when an appeal is filed, and may file a response with the applicable Vice President of Student Development and Campus Life or President, or designee, no later than 5 business days after receipt of such notice.

c) Review of an appeal will be limited to consideration of the following:

i. Whether there was a procedural error or a lack of adequate due process that affected the outcome of the matter. Deviations from procedures will not be a basis for sustaining an appeal unless significant prejudice resulted;

ii. Whether the sanction(s) imposed were appropriate or substantially disproportionate to the findings;

iii. To consider new evidence or information, sufficient to alter the Result, or other relevant facts not brought out in the original hearing, because such information and/or facts were not known or reasonably available to the person appealing at the time the Result was entered and that could have affected the outcome;

iv. The Title IX Coordinator or Deputy Title IX Coordinator, investigator, or member of the hearing panel had a conflict of interest or bias for or against complainants or respondents generally or toward the particular complainant or respondent that affected the outcome of the matter.

d) The appeal may be resolved in the following manner:

i. affirm the Interim/Supportive Measures or Result and the sanctions and corresponding stipulations; or

ii. affirm the Interim/Supportive Measures or Result and modify the sanction; or

iii. reverse the Interim/Supportive Measures or Result and determine a new outcome, which may include the dismissal of charges.

e) A written decision shall be issued resolving the appeal and shall state the rationale for the decision. The written decision of the appeal must be served simultaneously upon both parties.

f) The decision of the appeal is a final action of the University.

Record Retention

Records of complaints, interim measures, investigations, recordings or transcript of Proceedings, Results, disciplinary sanctions imposed, remedies provided to the parties, appeals, decisions on appeal, informal resolutions, and training must be retained for a period of no less than 7 years. The records retained must document the action taken by the University was not deliberately indifferent, interim supportive measures were provided or, if not provided, was clearly reasonable.

Records related to a complaint filed against a University employee or contractor shall be retained within the office of the Title IX Coordinator. Records related to a complaint filed against a student shall be retained in the Office of the Dean of Students. Such records may not be destroyed for 7 years or until after the record retention period imposed by the State of New Jersey has expired, whichever is later.

Retaliation

Retaliation against any person who files a complaint under the Title IX Sexual Harassment/Sexual Assault Policy and Procedures, or who provides information in the course of an investigation, or who opposes a discriminatory practice, is prohibited by the University and Federal law. No person

bringing a complaint, providing information for an investigation, or testifying in any proceeding under this Policy shall be subjected to adverse consequences in their employment or University academic programs or be the subject of other retaliation. Any employee or student who engages in such retaliation shall be subject to discipline by the University.

Training

The Title IX Coordinator, Deputy Title IX Coordinator, investigators, panel hearing members, any person who facilitates informal resolution, and any person who resolves an appeal, shall receive training on the definition of Sexual Harassment and Sexual Assault, the scope of the Title IX Sexual Harassment/Sexual Assault Policy and Procedures, how to conduct an investigation, how to conduct a hearing, appeal, informal resolution, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest and bias.

Hearing panel members shall also receive training on the use of any technology to be used at a live hearing and on the relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.

Investigators shall also receive training on relevance in order to create an investigative report that fairly summarizes relevant evidence.

Any materials used for training must not rely upon sex stereotypes and must promote impartial investigations and adjudications of formal complaints of Sexual Harassment and Sexual Assault.

Training materials must be made publicly available on the University's website.

External Complaint Process

In addition to following the University's internal procedures, a person has the right to file a complaint with federal agencies that investigate Sexual Harassment, Sexual Assault, and discrimination. An external complaint must be filed directly with the agency. The agencies should be consulted concerning time deadlines for filing.

Office for Civil Rights
U.S. Department of Education
New York Office
75 Park Place, 14th Floor
New York, New York 10007-2146
212-637-6466

Assistant Secretary
U.S. Department of Education
Office of Postsecondary Education
400 Maryland Avenue, S.W.
Washington, DC 20202
Main Telephone: 202-453-6914 or 1-800-872-5327 (toll-free)

Resources

If needed, the following support services are available:

Confidential Resources for Employees

The **Montclair State University Employee Assistance Program** (EAP) by contacting CONCERN at 1-800-242-7371.

Confidential Resources for Students

- **Center for Faith and Spirituality**, Student Center Annex, 1st Floor, Rm. 110, 973-655-7130
- **The Student Health Center**, Blanton Hall, Ground Floor, Rm. 110, 973-655-4361
- **Counseling and Psychological Services**, Russ Hall, First Floor, 973-655-5211
- **Office of Student Belonging**, Student Center Annex, 1st Floor, Rm. 110, 973-655-7130
- **The Women's Center**, Student Center Annex, 1st Floor, Rm. 110, 973-655-7130

Non-Confidential Resources for Students

- **The Office of the Dean of Students**, Cole Hall, Room 348, 973-655-4118
- **Residence Life**, Bohn Hall, 4th Floor, left exterior stairs of Bohn Hall, 973-655-5188

Community Resources for Students and Employees

- **Passaic County Women's Center** 24-Hour Hotline, 973-881-1450
- **SAVE of Essex County** 24-Hour Hotline, 877-733-2273
- **NJ Coalition End DV**, 24-Hour Hotline, Search by County, 1-800-572-7233
- **National DV Hotline**, 24-Hour, 1-800-572-SAFE (7233)
- **National RAINN Sexual Assault Hotline**, 24-hour, Live Chat, 1-800-656-HOPE