

Interim
Sexual Harassment and Discrimination
Grievance Procedure

Applicability

This Interim Sexual Harassment and Discrimination Grievance Procedure applies to complaints of Harassment or Discrimination on the basis of sex. Complaints of Harassment or Discrimination on the basis of other classifications protected by law are subject to MPTC's Harassment and Discrimination Reporting Procedure.

General

Moraine Park Technical College (MPTC) is committed to providing an educational and work environment that is respectful of all of our students, staff, and community. The College believes that all students and employees are entitled to learn and work in an environment free from discrimination and harassment. The College will not tolerate unlawful discrimination, harassment of any kind, or retaliation against a person who files a complaint or participates in the investigation of a complaint relating to discrimination or harassment by an employee, student, customer, or vendor.

Employees discriminating against employees, students, or non-employees will be subject to corrective action under appropriate MPTC employment procedures. Students discriminating against other students, employees, or non-employees will be subject to discipline under the applicable student code of conduct. The College will take necessary corrective action to remedy any instances where discrimination or harassment is determined to have occurred.

All Faculty, Adjunct Faculty, Management and Support Professional employees of the College are mandatory reporters of harassment and discrimination and are obligated to report harassment or discrimination to appropriate College officials. Student and temporary workers are not mandatory reporters. Failure of a mandatory reporter to report an incident of discrimination or harassment of which they become aware is a violation of this Procedure and may be subject to disciplinary action.

The College's professional counselors and staff are not mandatory reporters of harassment and discrimination disclosed to them while engaging in professional counseling, except in cases of immediate threat or danger, or when required to disclose by law or court order. If a person would like the details of an incident to be kept confidential, they may speak with a professional counselor about the incident.

Use of this Procedures does not preclude the right of a person to also file a complaint with the Equal Rights Division of the Department of Workforce Development, the Department of Education's Office for Civil Rights, the U.S. Equal Employment Opportunity Commission or the U.S. Wage and Hour Division in the Department of Labor or any other administrative or law enforcement agency with jurisdiction over the complaint. Most anti-discrimination laws have a time limit of 180 to 300 days during which an individual may file a complaint.

Accessible Reporting

Employees designated by the MPTC President who have the responsibility of oversight of Title IX activities, training and investigations are MPTC's Title IX Coordinators are Kim Schwamn, Interim Dean of Students, and Paula Stettbacher, Director of Talent Management.

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MPTC allows 24/7 reporting. Specifically, any person may report Discrimination or Harassment (whether or not the person reporting is the person alleged to be the victim of the alleged Discrimination or Harassment), in person, by mail, by telephone, or by e-mail, using the contact information listed above, or by any

other means that results in the individuals described above (or their successors) receiving the person's report.

Complaint Procedure

Step 1: Complaint. If a person believes they were subject to an act of Discrimination or Harassment as defined in this Procedure, they may make a complaint to one of the Title IX Coordinators identified above. If the person believes that one of the Title IX Coordinators described above is responsible for or has permitted Discrimination or Harassment to occur, they should make their complaint to the other Title IX Coordinator.

Upon receipt of a complaint, a Title IX Coordinator will promptly and confidentially contact the complainant to discuss the availability of supportive measures, the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a Formal Complaint, and explain to the complainant the process for filing a Formal Complaint.

A complainant's wishes with respect to whether MPTC investigates their complaint will be respected unless the Title IX Coordinator determines that signing a Formal Complaint to initiate an investigation despite the wishes of the complainant is necessary under the circumstances.

Step 2: Notification of Rights. Upon receiving a complaint, the Title IX Coordinator will inform the complainant of their rights under state and federal law. This will include outlining external resources that are available through the Wisconsin Department of Workforce Development and the Equal Employment Opportunity Commission, if applicable.

Step 3: Determination of Validity. The Title IX Coordinator will review the complaint to determine if it is "valid" under this Procedure. "Validity" does not concern whether an act of Harassment or Discrimination has occurred but whether the complaint pertains to conduct that is governed by this Procedure. If the complaint is determined not to be "valid," the matter will be closed, and the Title IX Coordinator will refer those involved to any appropriate MPTC resources,

which may include other applicable MPTC procedures. If the complaint is determined to be valid, MPTC will proceed to Step 4.

Step 4a: Informal Resolution. MPTC may, in its discretion, offer and facilitate informal resolution options for individuals who do not wish to pursue the formal investigation and hearing process described below. Informal resolutions may be achieved through methods such as negotiated resolutions, so long as both parties give voluntary, informed, written consent to attempt informal resolution. Informal resolutions may avoid the need for a formal investigation. However, MPTC 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 a formal investigation and adjudication of formal complaints of Discrimination or Harassment.

At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the formal complaint process with respect to their complaint. However, MPTC will not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

Step 4b: Investigation. MPTC will investigate Discrimination or Harassment allegations in any Formal Complaint that is found to be “valid” and not resolved through the informal resolution process.

MPTC will send written notice to both parties (complainants and respondents) of the allegations upon receipt of a Formal Complaint. The investigator(s) assigned to the complaint, who may be MPTC employees or outside investigators, will conduct a prompt, fair, and impartial investigation of the complaint that will include, but will not necessarily be limited to (1) interviews with the complainant, respondent, and appropriate witnesses, (2) fact and information gathering, and (3) review of documentary evidence.

While conducting the investigation, the investigator(s) and MPTC will do the following:

- Bear the burden of gathering evidence during the investigation and the burden of proof are on MPTC, not on the parties.

- Provide equal opportunity for the parties to present fact and expert witnesses and other inculpatory and exculpatory evidence.
- Not restrict the ability of the parties to discuss the allegations or gather evidence (e.g., no “gag orders”).
- Allow the parties to select an advisor of the party’s choice who may be, but need not be, an attorney.
- Send written notice of any investigative interviews, meetings, or hearings.
- Send the parties and their advisors all evidence directly related to the allegations, in electronic format or hard copy, with at least 10 days for the parties to inspect, review, and respond to the evidence.
- Send the parties and their advisors an investigative report that fairly summarizes relevant evidence, in electronic format or hard copy, with at least 10 days for the parties to respond.
- The investigator(s) may, in their discretion, dismiss the complaint or allegations therein if the complainant informs the Title IX Coordinators in writing that the complainant desires to withdraw the complaint or allegations therein, if the respondent is no longer enrolled or employed by MPTC, or if specific circumstances prevent MPTC from gathering sufficient evidence to reach a determination.
- The Title IX Coordinators will give the parties written notice of a dismissal and the reasons for the dismissal.
- MPTC may, in its discretion, consolidate complaints where the allegations arise out of the same facts.
- The privacy of a party’s medical, psychological, and similar treatment records will be protected. MPTC and its investigator(s) cannot access or use such records unless MPTC and its investigator(s) obtain the party’s voluntary, written consent to do so.

The investigator(s) will attempt to complete their investigation within 60 calendar days from receipt of the complaint. However, the investigation period may be extended by the investigator(s) if they determine an extension is necessary in order to complete a proper investigation. The investigator(s) will inform the parties of any extension.

Upon completion of the investigation, the investigator(s) will issue a written investigative report.

Step 4: Hearing. After issuance of the investigative report, and at least 10 business days after the parties have received and been able to respond to the report, MPTC will hold a live hearing. The hearing will meet the following requirements:

- A live hearing will be conducted by an independent hearing officer that is not otherwise affiliated with MPTC.
- At the live hearing, independent hearing officer will permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.
- Cross-examination at the live hearing will be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally. If a party does not have an advisor present at the live hearing, MPTC will provide, without fee or charge to that party, an advisor of MPTC's choice who may be, but is not required to be, an attorney to conduct cross-examination on behalf of that party.
- Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the independent hearing officer must first determine whether the question is relevant and explain to the party's advisor any decision to exclude a question as not relevant.
- If a party or witness does not submit to cross-examination at the live hearing, the independent hearing officer may not rely on any statement of that party or witness in reaching a determination regarding responsibility;

provided, however, that the independent hearing officer cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

- Live hearings will be conducted with all parties, witnesses, and other participants appearing virtually.
- MPTC will create an audio or audiovisual recording, or transcript, of the live hearing.

MPTC provides rape shield protections for complainants that gives the independent hearing officer and investigators the discretion to deem irrelevant questions and evidence about a complainant's prior sexual behavior unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent.

Step 5: Written Determination. The standard of evidence to determine responsibility is the "preponderance of the evidence" standard. The preponderance of evidence standard concerns whether an act of Discrimination or Harassment is more likely than not to have occurred. This standard applies to all complaints whether the respondent is a student or an employee.

Within 10 business days of completion of the live hearing, the independent hearing officer will issue a written determination regarding responsibility with findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions imposed on the respondent (which will be determined in consultation with the Title IX Coordinators), and whether remedies will be provided to the complainant. This deadline may be extended by the independent hearing officer if the independent hearing officer determines that an extension is necessary in order to prepare the written determination. If the deadline is extended, the independent hearing officer must provide written notice to the parties.

The written determination must be sent simultaneously to the parties along with information about how to file an appeal.

Step 5: Appeals. Within 5 business days of receiving the independent hearing officer's written determination or an investigator(s) notice of dismissal, both parties have the right to an appeal from the determination or dismissal on the following bases:

1. Procedural irregularity that affected the outcome of the matter;
2. Newly discovered evidence that could affect the outcome of the matter; and/or
3. There was a conflict of interest or bias that affected the outcome of the matter.
4. The individual does not contest the determination as to whether an act of Discrimination or Harassment occurred but does wish to appeal the specific sanction imposed.

Appeals will be reviewed by the Vice President – Student Services if the appealing party is a student or the Vice President - Finance and Administration if the appealing party is an employee.

Decisions on appeals will be issued within 10 business days of receipt of the appeal request. However, this deadline may be extended by the Vice President if they determine an extension is necessary in order to make a proper decision on the appeal. The sanction being appealed will remain in effect during the appeal.

Online Conduct

This procedure is intended to be interpreted broadly to include online and cyber manifestations of Discrimination and Harassment, provided those behaviors occur in or have an effect on MPTC's education or employment programs or use MPTC's networks, technology, or equipment.

Non-Retaliation

Retaliating directly or indirectly against a person who has in good faith submitted a formal complaint, made a formal complaint, or participated in an investigation is

strictly prohibited. Specifically, MPTC prohibits retaliation, which can include, but is not limited to:

- Charging an individual with code of conduct violations that arise out of the same facts or circumstances as a report or formal complaint, for the purpose of interfering with any right or privilege secured by law or this Procedure constitutes retaliation;
- Pressuring the person to drop or not support their complaint or to provide false or misleading information; engaging in conduct that may reasonably be perceived to adversely affect that person's educational, living, or work environment; threatening, intimidating, or coercing the person; or otherwise discriminating against any person for exercising any rights or responsibilities under this Procedure.
- Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a complaint proceeding does not constitute retaliation; however, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a bad faith materially false statement.

MPTC will keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, as required by law, or as necessary to carry out proceedings under this Procedure.

The exercise of rights protected under the First Amendment does not constitute retaliation.

Sanctions

Student Sanctions.

- *Warning:* A formal statement that the conduct was unacceptable and a warning that further violation of any MPTC policy, procedure, or directive will result in more severe sanctions or responsive actions.
- *Probation:* A written reprimand for violation of policy, providing for more severe disciplinary sanctions in the event that the student or organization is

found in violation of any policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, or other measures deemed appropriate.

- *Suspension*: Termination of student status for a definite period of time or until specific criteria are met.
- *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend MPTC-sponsored events.
- *Withholding Diploma*: MPTC may withhold a student's diploma for a specified period of time or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree*: MPTC reserves the right to revoke a degree previously awarded from the College for fraud, misrepresentation, or other violation of MPTC policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Organizational Sanctions*: Deactivation, loss of recognition, loss of some or all privileges (including registration) for a specified period of time.
- *Other Actions*: In addition to or in place of the above sanctions, MPTC may assign any other sanctions as deemed appropriate.

Employee Sanctions.

- Warning – Verbal or Written
- On Demand Evaluation and Performance Improvement Plan
- Required Counseling

- Required Training or Education
- Loss of Pay Increase
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Suspension with pay
- Suspension without pay
- Termination
- Any other sanctions as deemed appropriate.

General Requirements

Throughout implementing the provisions of this procedure, MPTC, its staff, investigator(s) and decision-makers will do the following:

- Treat complainants equitably by providing remedies any time a respondent is found responsible, and treat respondents equitably by not imposing disciplinary sanctions without following the complaint process prescribed.
- Ensure that remedies, which are required to be provided to a complainant when a respondent is found responsible, will be designed to maintain the complainant's equal access to education and may include the same individualized services as supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.
- Require objective evaluation of all relevant evidence, inculpatory and exculpatory, and avoid credibility determinations based on a person's status as a complainant, respondent, or witness.

- Train MPTC personnel, which will include training on the definition of “sexual harassment,” the scope of the MPTC’s education programs or activities, how to investigate and complaint process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
- Ensure that independent hearing officers are trained on any technology to be used at a live hearing.
- Ensure that independent hearing officers and investigators are trained on issues of relevance, including how to apply the rape shield protections provided only for complainants.
- Post all relevant materials used to train Title IX personnel on the MPTC website and make materials available for members of the public to inspect.
- Ensure that this complaint process will not use, rely on, or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

Definitions

Discrimination: A difference in treatment in any service, program, course or facility provided by MPTC that is based on a person’s membership in a Protected Class. This Procedure only applies to Discrimination on the basis of sex.

Protected Class: Protected classes include race, color, religion, national origin, ancestry, creed, sex, disability, arrest record, conviction record, age, veteran status, membership in the National Guard, State Defense Force, or other reserve component of the military forces of Wisconsin or the United States, marital status, pregnancy, sexual orientation, political affiliation, parental status, genetic testing, the use or nonuse of lawful products off the employer’s premises during nonworking hours, and any other protected class established by applicable state, federal, or local law.

Harassment: Unwelcome conduct based on a person's membership in a Protected Class where (1) enduring the conduct becomes a condition of continued employment/enrollment or (2) the conduct is sufficiently severe or pervasive to create a work/learning environment that a reasonable person would consider intimidating, hostile, or abusive. The conduct may include, but is not limited to, offensive jokes, bullying, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with performance. The term "harassment," as used in this Procedure, shall at all times be interpreted consistent with applicable law. This Procedure applies only to Harassment on the basis of sex.

Sexual Harassment: Sexual harassment is a type of Harassment defined broadly to include any of three types of misconduct on the basis of sex, all of which jeopardize equal access to education.

- Any instance of *quid pro quo* harassment;
- Any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; and
- Any instance of sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).

Quid Pro Quo Harassment: Conditioning an educational or employment benefit or service upon a person's participation in unwelcome sexual conduct.

Complainant: Any individual who is alleged to be the victim of Discrimination or Harassment.

Respondent: Any individual who is reported to be the perpetrator of Discrimination or Harassment.

Formal Complaint: A document that initiates MPTC's complaint process. Specifically, a formal complaint is a document filed by a complainant or signed by a Designee alleging Discrimination or Harassment against a respondent, requesting that MPTC investigate the allegation, and stating that at the time of filing the formal complaint, the complainant is participating in or attempting to participate in an education or employment program or activity of MPTC. Where a Designee signs a formal complaint, the Designee is not a complainant or a party during a complaint process, and must remain free from conflicts and bias.

Supportive Measures: Individualized services reasonably available that are nonpunitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment. These services may include, but are not limited to:

- Referral to counseling, medical, or healthcare services.
- Referral to the Employee Assistance Program.
- Referral to community-based service providers.
- Visa and immigration assistance.
- Student financial aid counseling.
- Education to the community or community subgroups.
- Altering work arrangements for employees or student-employees.
- Safety planning.
- Providing campus safety escorts.
- Providing transportation accommodations.
- Implementing contact limitations between the parties.
- Academic support.
- Timely warnings.
- Class schedule modifications, withdrawals, or leaves of absence.
- Increased security and monitoring of certain areas of campus.
- Any other actions deemed appropriate.

Actual Knowledge: Notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient.

Consent: In the implementation of this Procedure, “sexual consent” shall be defined as words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact. Minors, persons suffering from mental illness or defect that impairs capacity to appraise personal conduct, and persons who are unconscious or for any other reason are physically unable to communicate unwillingness to act are presumed unable to give consent. Failure to resist does not indicate consent.

Day: In the implementation of this Procedure, “business day” refers to a day that the College is open for business.