

PROHIBITED SEX DISCRIMINATION, SEX-BASED HARASSMENT, AND RETALIATION PROCEDURE (2024)

MCCCD will act on any Notice, Complaint or knowledge of a potential violation of AR 5.1.17 Prohibited Sex Discrimination, Sex-Based Harassment, And Retaliation (“the Regulation”) that is received by the TIXC or any other Mandated Reporter by applying the sections outlined in this accompanying Prohibited Sex Discrimination, Sex-Based Harassment, and Retaliation Procedure (“Procedure”) This Procedure outlines the Resolution Process to resolve complaints.

I. Pre-Resolution Process

A. Notice of Complaint

A report provides notice to the recipient of an allegation or concern about sex discrimination, sex-based harassment, or retaliation and provides an opportunity for the TIXC to provide information, resources, and supportive measures. A complaint provides notice to MCCCD that the complainant would like to initiate an investigation or other appropriate resolution procedures. A complainant or individual may initially make a report and may decide at a later time to make a complaint. Reports or complaints of sex discrimination, sex-based harassment, and/or retaliation may be made using any of the following options:

1. File a complaint with, or give verbal notice directly to, a TIXC or mandated reporters. Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address listed for the TIXC or any other mandated reporter. TIXCs can be found on the following page at: <https://district.maricopa.edu/consumer-information/title-ix/regional-directors>
2. Report online, using the reporting form posted at <https://district.maricopa.edu/consumer-information/reporting>. Anonymous reports are accepted, but the notice may give rise to a need to try to determine the parties’ identities. Anonymous notice typically limits MCCCD’s ability to investigate, respond, and provide remedies, depending on what information is shared. Measures intended to protect the community or redress or mitigate harm may be enacted. MCCCD tries to provide supportive measures to all complainants, which is likely impossible with an anonymous report when the name of the Complainant is not shared in the report.

For disciplinary action to be issued, the respondent must be an MCCCD student or employee at the time of the alleged incident. If the respondent is unknown or is not a member of the MCCCD community, the TIXC will offer to assist the complainant in identifying appropriate institutional and local resources and support options and will implement appropriate supportive measures and/or remedial actions (e.g., trespassing a person from campus). MCCCD can also assist in contacting local or institutional law enforcement if the individual would like to file a police report about criminal conduct.

When a party is participating in a dual enrollment and/or early college program, MCCCD will coordinate with the party’s home institution or school to determine jurisdiction and coordinate providing supportive measures and responding to the complaint under the appropriate policy and procedures based on the allegations and identities of the parties.

B. Time Limits on Reporting

There is no time limitation on providing notice/complaints to the TIXC. However, if the respondent is no longer subject to the MCCCD’s jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the TIXC (except in cases where mandatory dismissal is required), who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

C. Supportive Measures

MCCCD will offer and implement appropriate and reasonable supportive measures to the Parties upon notice of sex discrimination, sex-based harassment, and/or retaliation. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Parties to restore or preserve access to the MCCCD's education program or activity, including measures designed to protect the safety of all Parties, and/or MCCCD's educational environment, and/or deter sex discrimination, sex-based harassment and/or retaliation.

The TIXC will promptly make supportive measures available to the Parties upon receiving Notice/Knowledge of allegations or a complaint. At the time that supportive measures are offered, if a complaint has not been filed, MCCCD will inform the complainant, in writing, that they may file a complaint with MCCCD either at that time or in the future. The TIXC will work with the Complainant to ensure that their wishes are considered with respect to the planned and implemented supportive measures.

MCCCD will maintain the confidentiality of the supportive measures, provided confidentiality does not impair MCCCD's ability to provide the supportive measures. MCCCD will act to ensure as minimal an academic/workplace impact on the Parties as possible. MCCCD will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- 1) Referral to counseling, medical, and/or other healthcare services
- 2) Referral to the Employee Assistance Program
- 3) Referral to community-based service providers
- 4) In-house visa and immigration assistance
- 5) Student financial aid counseling
- 6) Education to the community or community subgroup(s)
- 7) Altering work arrangements for employees or student-employees
- 8) Safety planning
- 9) Providing campus safety escorts
- 10) Implementing contact limitations (no contact orders) between the Parties
- 11) Academic support, extensions of deadlines, or other course/program-related adjustments
- 12) Trespass orders, when applicable
- 13) Timely warnings
- 14) Class schedule modifications, withdrawals, or leaves of absence
- 15) Increased security and monitoring of certain areas of the campus
- 16) Any other actions deemed appropriate by the TIXC

Violations of no contact orders or other restrictions will be referred to appropriate student or employee conduct processes for enforcement or added as collateral misconduct allegations to an ongoing complaint under this Procedure.

The Parties are provided with a timely opportunity to seek modification or reversal of the decision to provide, deny, modify, or terminate supportive measures applicable to them. A request to do so should be

made in writing to the TIXC. The TIXC will select a Supportive Measure Appeal Decision-maker, an impartial employee other than the TIXC who implemented the supportive measures, who has authority to modify or reverse the decision, will determine whether to provide, deny, modify, or terminate the supportive measures if they are inconsistent with the Title IX regulatory definition of supportive measures. The Parties will also have the opportunity to seek additional modification or termination of supportive measures applicable to them if circumstances materially change. MCCCCD typically renders decisions on supportive measures within seven (7) business days of receiving a request and provides a written determination to the impacted party(ies) and the appropriate TIXC.

D. Accommodations and Support in the Resolution Process

Disability Accommodations

MCCCCD is committed to providing reasonable accommodations and support to persons with disabilities and religious accommodations, when that accommodation is consistent with federal and state law, to qualified students, employees, or others with disabilities to ensure equal access to MCCCCD's resolution process. Anyone needing such accommodation should contact the TIXC and request the accommodation. The TIXC will work with the college Disability Resource Services manager (for students) or Human Resources (for employees) as appropriate to review the request and, in consultation with the person requesting the accommodation, determine which accommodations are appropriate and necessary for full process participation.

If a Complainant or Respondent is an elementary or secondary student with a disability, MCCCCD requires the TIXC to consult with one or more members, as appropriate, of the student's Individualized Education Program (IEP) team.

Other Support

MCCCCD will also address reasonable requests for support for the parties and witnesses, including:

- Language services/interpreters
- Access and training regarding use of technology throughout the resolution process
- Other support as deemed reasonable and necessary to facilitate participation in the resolution process

E. Initial Assessment of Complaint

Upon receipt of a notice, a complaint or knowledge of an alleged Regulation violation, the TIXC will initiate a prompt initial assessment to determine the next steps. The TIXC will contact the complainant/source of the notice to offer supportive measures, provide information regarding resolution options, and determine how they wish to proceed.

Any of the following offenses can be charged as or combined as pattern offenses, in which case the Notice of Investigation and Allegation (NOIA) will clearly indicate that both individual incidents and a pattern of conduct are being investigated. A pattern may exist and be charged when there is a potential substantial similarity to incidents where the proof of one could make it more likely that the other(s) occurred, and vice versa. Patterns may exist based on target selection, similarity of offense, or other factors. Where a pattern is found, it can be the basis to enhance sanctions, accordingly.

The TIXC conducts an initial evaluation, typically within five (5) business days of receiving notice/complaint/knowledge of alleged misconduct. The initial evaluation typically includes:

- Assessing whether the reported conduct may reasonably constitute a violation of the Regulation.

- If the conduct may not reasonably constitute a violation of the Regulation, the matter is typically dismissed from this process, consistent with the dismissal provision. It may then be referred to another process, if applicable.
- Determining whether MCCCCD has jurisdiction over the reported conduct.
 - If the conduct is not within MCCCCD jurisdiction, the matter is typically dismissed from this process, consistent with the dismissal provision. If applicable, the conduct will be referred to the appropriate MCCCCD office for resolution.
- Offering and coordinating supportive measures for the complainant.
- Offering and coordinating supportive measures for the respondent, as applicable.
- Notifying the complainant, or the person who reported the allegation(s), of the available resolution options, including a supportive and remedial response, an informal resolution option, or the resolution process described below.
- Determining whether the complainant wishes to initiate a complaint.
- Notifying the respondent of the available resolution options, including a supportive and remedial response, an informal resolution option, or the resolution process described below, if a complaint is made.

1. Complainant Initiates Complaints

If the Complainant indicates they wish to initiate a complaint (in a manner that can reasonably be construed as reflecting intent to make a complaint), the TIXC will help to facilitate the complaint, which will include working with the Complainant to determine whether the complainant wishes to pursue one of three resolution options:

- A supportive and remedial response, and/or
- Informal resolution, or
- The resolution process described below.

The TIXC will seek to abide by the wishes of the complainant but may have to take an alternative approach depending on their analysis of the situation. If the complainant elects for the resolution process, and the TIXC has determined the Regulation applies and that MCCCCD has jurisdiction, they will route the matter to the appropriate investigators, will provide the parties with a notice of investigation and allegation(s), and will initiate an investigation consistent with these procedures.

If any party indicates (either verbally or in writing) that they want to pursue an informal resolution option, the TIXC will assess whether the matter is suitable for informal resolution and refer the matter accordingly. If the complainant indicates (either verbally or in writing) that they do not want any action taken, no resolution process will be initiated (unless deemed necessary by the TIXC). The complainant can elect to initiate a complaint at a later date. Upon making a complaint, a complainant has the right, and can expect, to have allegations taken seriously by MCCCCD, and to have the incidents properly resolved through these procedures.

2. Authority for TIXC to Initiate a Complaint

If a complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a complaint to be pursued, they may make such a request to the TIXC who will offer supportive measures and determine whether to initiate a complaint themselves.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow MCCCCD to honor that request, MCCCCD will offer supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

The TIXC has ultimate discretion over whether a complaint is initiated when the Complainant does not wish to proceed. If deemed necessary, the TIXC's decision to initiate a Complaint may be based on consultation with appropriate MCCCCD employees and/or results of a violence risk assessment showing a compelling risk to health and/or safety that requires MCCCCD to pursue action to protect the community. To make this determination, the TIXC will evaluate the request to determine if there is a serious and imminent threat to someone's safety or if MCCCCD cannot ensure equal access without initiating a complaint. The TIXC will consider the following non-exhaustive factors to determine whether to file a complaint:

- The complainant's request not to initiate a complaint.
- The complainant's reasonable safety concerns regarding initiating a complaint.
- The risk that additional acts of sex discrimination would occur if a complaint is not initiated.
- The severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of a respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence.
- The age and relationship of the parties, including whether the respondent is an MCCCCD employee.
- The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing discrimination, or discrimination alleged to have impacted multiple individuals.
- The availability of evidence to assist a decision-maker in determining whether sex discrimination occurred.
- Whether MCCCCD could end the alleged sex discrimination and prevent its recurrence without initiating its resolution process.

When the TIXC initiates a Complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of the Regulation.

The Complainant retains all rights of a Complainant irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the selected Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant.

3. Counter-Complaints

MCCCCD is obligated to ensure that the resolution process is not abused for retaliatory purposes. MCCCCD permits the filing of counter-complaints but uses an initial evaluation, described above, to assess whether the allegations in the counter-complaint are made in good faith. Counter-claims not made in good faith made will not be permitted and may constitute a violation of this Regulation.

Counter-complaints determined to have been reported in good faith will be processed using the Resolution procedures below. 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 TIXC.

F. Complaint Dismissal

The TIXC may choose to dismiss a Complaint or any allegations therein if, at any time during the investigation or Resolution Process one or more of the following grounds are met:

1. MCCCCD is unable to identify the respondent after taking reasonable steps to do so
2. MCCCCD no longer enrolls or employs the respondent
3. A complainant voluntarily withdraws any or all of the allegations in the complaint, and the TIXC declines to initiate a complaint

4. MCCD determines the conduct alleged in the complaint would not constitute a violation of the Regulation, if proven

In addition to other members of the Resolution Process pool as authorized by the TIXC, a decision-maker can recommend dismissal to the TIXC if they believe the grounds above are met. Upon any dismissal, the TIXC will promptly send the Complainant written notification of the dismissal and the rationale for doing so. If the dismissal occurs after the Respondent has been made aware of the allegations, the TIXC will also notify the respondent of the dismissal.

Any conduct alleged in the Complaint that is dismissed will be referred by the TIXC to the Student Code of Conduct administrator (for student Respondents) or the college or district Human Resources administrator (for employee/third party Respondents). Referrals shall take place within three (3) days of the date of the notification of the dismissal.

G. Appeal of Complaint Dismissal

The Complainant may appeal a dismissal of their complaint. The respondent may also appeal the dismissal of the complaint if dismissal occurs after the respondent has been made aware of the allegations. All dismissal appeal requests must be filed within three (3) business days of the notification of the dismissal.

The TIXC will notify the parties of any appeal of the dismissal. If, however, the complainant appeals, but the respondent was not notified of the complaint, the TIXC must then provide the respondent with a NOIA and will notify the respondent of the complainant's appeal with an opportunity to respond.

The grounds for dismissal appeals are limited to:

- 1) Procedural irregularity that would change the outcome.
- 2) New evidence that would change the outcome and that was not reasonably available when the dismissal was decided.
- 3) The TIXC, investigator, or decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

The appeal request should specify at least one of the grounds above and provide any reasons or supporting evidence for why the ground is met. Upon receipt of a written dismissal appeal request from one or more parties, the TIXC will share the request with all other parties and provide three (3) business days for other parties and the TIXC to respond to the request. At the conclusion of the response period, the TIXC will forward the appeal, as well as any response provided by the other parties and/or the TIXC to the Dismissal Appeal Officer for consideration. The Dismissal Appeal Officer will be selected from the Resolution pool.

In most circumstances, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The dismissal appeal officer has five (5) business days to review and decide on the appeal, though extensions can be granted at the TIXC's discretion, and the parties will be notified of any extension. Appeal decisions are deferential to the original determination, making changes only if there is a compelling justification to do so.

If the request for appeal does not provide information that meets the grounds, Dismissal Appeal Officer or designees, will deny the request, and the parties, their advisors, and the TIXC will be notified in writing of the denial and the rationale. If any of the asserted grounds in the appeal satisfy the grounds described, then the Dismissal Appeal Officer will notify all parties and their advisors, and the TIXC, of their decision and rationale in writing. The effect will be to reinstate the complaint.

H. Collateral Misconduct

Collateral misconduct is defined to include potential violations of other MCCCC policies not incorporated into the Regulation that occur in conjunction with alleged violations of the Regulation, or that arise through the course of the investigation, for which it makes sense to provide one resolution for all allegations. Thus, the collateral allegations may be charged along with potential violations of the Regulation, to be resolved jointly under these Procedures. In such circumstances, the TIXC may consult with human resources, student conduct, and academic affairs to solicit their input as needed on what charges should be filed, but the exercise of collateral charges under these procedures is within the discretion of TIXC. All other allegations of misconduct unrelated to incidents covered by the Regulation will typically be addressed separately through procedures described in the student, faculty, and staff handbooks.

I. Advisor

1. Right to an Advisor

The Complainant and Respondent may each have an Advisor of their choice present for all of their meetings and interviews within the resolution process, including intake. Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing. If either party chooses not to have an Advisor present in the initial stages of the resolution process, this choice will be documented in the record of the case.

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the MCCCCD community. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available. "Available" means the party agrees to act as Advisor and has no conflict of interest in doing so. The Advisor cannot have institutionally conflicting roles, such as having an active role in the matter or who must monitor and implement sanctions. Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing decision-maker. MCCCCD may permit parties to have more than one advisor, or an advisor and a support person, upon special request to the TIXC. The decision to grant this request is at the TIXC's sole discretion and will be granted equitably to all parties.

If the parties choose an Advisor from the pool available from MCCCCD, the Advisor will be trained by MCCCCD and be familiar with MCCCCD's resolution process. If the parties choose an Advisor from outside the pool of those identified by MCCCCD, the Advisor may not have been trained by MCCCCD and may not be familiar with MCCCCD policies and procedures. Advisors appointed by MCCCCD cannot be confidential employees.

MCCCCD 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, MCCCCD is not obligated to provide an attorney to advise that party.

Witnesses are not permitted to have advisors in resolution process interviews or meetings.

2. Advisor's Role in Resolution Process

Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith. Advisors may not provide testimony or speak on behalf of their advisee unless given specific permission to do so.

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.

Advisors may not address MCCCDC officials in a meeting or interview unless invited to do so (e.g., asking procedural questions). The Advisor may not speak on behalf of their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the investigator(s) or other Decision-maker except during a hearing proceeding, during cross-examination.

3. Pre-Interview Meetings

Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. In order for a pre-interview meeting to be held it must be requested by the Advisor. This pre-meeting allows Advisors to clarify and understand their role and MCCCDC's regulations and procedures. A pre-interview meeting is not mandatory.

4. Advisors in Hearings

The parties are not permitted to directly cross-examine each other or any witnesses. If a party does not have an Advisor for a hearing, MCCCDC will appoint a trained Advisor for the limited purpose of conducting cross-examination.

A party may reject this appointment and choose their own Advisor, but they may not proceed with the hearing without an Advisor. If the party's Advisor will not conduct cross-examination, MCCCDC will appoint an Advisor who will do so thoroughly, 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.

5. **Sharing Information with the Advisor**

Parties may share documentation and evidentiary information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

MCCCDC also provides a consent form (FERPA authorization to release) that authorizes MCCCDC to share such information directly with a party's Advisor. The parties must either complete and submit this form to the TIXC or provide similar documentation demonstrating consent to a release of information to the Advisor before MCCCDC is able to share records with an Advisor.

Advisors are expected to maintain the confidentiality 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 MCCCDC. MCCCDC 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 the MCCCDC's privacy expectations.

MCCCDC will not comply with any party's request that all communications be made through their attorney advisor.

6. **Expectations of an Advisor**

MCCCDC expects an Advisor to adjust their schedule to allow them to attend MCCCDC meetings when planned. At the sole discretion of the TIXC, scheduled meetings may be changed to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay. A TIXC's decision as to whether to change meeting date and time is final.

MCCCD 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.

Advisors are expected to advise without disrupting the resolution process.

7. 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) business 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 TIXC 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 TIXC of the identity of their hearing Advisor at least two (2) business days before the hearing.

8. Advisor Violations

All Advisors are subject to the same MCCCD regulations and procedures. Any Advisor who oversteps their role, who shares information or evidence in a manner inconsistent with the regulation, or who refuses to comply with MCCCD's established rules of decorum will be warned only once. If an Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented, including MCCCD requiring the party to use a different advisor or providing a different MCCCD-appointed advisor. Subsequently, the TIXC will determine how to address the Advisor's non-compliance and future role.

J. Emergency removal

1. Student

MCCCD can act to emergency remove a student respondent accused of sex discrimination, sex-based harassment, or retaliation upon receipt of notice/knowledge, a complaint, or at any time during the resolution process. Prior to an emergency removal, MCCCD will conduct an individualized safety and risk assessment and may remove the student if has determined that an imminent and serious threat to the health or safety of a complainant, any students, or employees, or other individuals justifies removal. This risk analysis is performed by the TIXC in conjunction with the college or district behavioral intervention team (also known as BIT/BAT/TAT/CARE, etc.) using its standard objective violence risk assessment procedures.

The TIXC has sole discretion to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal will be grounds for discipline, which may include expulsion from the MCCCD or termination from employment.

In all cases where an emergency removal is imposed, wholly or partially:

- 1) The Respondent will be given written notice, to include a written summary of the basis for the emergency removal, and the option to challenge the emergency removal within three (3) business days of the notification. In the written notice will be the option to request to meet with the TIXC as soon as reasonably possible, to show cause as to why the action/removal should not be implemented or should be modified.

- 2) The Respondent has three (3) business days after the receipt of the notice to request a meeting with the TIXC. If the Respondent does not make such a request within the three (3) day time period, objection to the emergency removal is deemed waived. A student can later request a meeting to show why they are no longer an imminent and serious threat because conditions related to imminence or seriousness have changed.
- 3) Upon receipt of a challenge, the TIXC will meet with the Respondent (and their Advisor, if desired) as soon as reasonably possible thereafter to allow them to show cause why the removal/action should not be implemented or should be modified.
- 4) This meeting is not a hearing on the merits of the underlying Title IX allegation(s), but rather an administrative process intended to determine solely whether the emergency removal is appropriate, should be modified, or lifted.
- 5) A Complainant and their Advisor may be permitted to participate in this meeting if the TIXC determines it is equitable to do so.
- 6) The respondent may provide information, including expert reports, witness statements, communications, or other documentation for consideration prior to or during the meeting. When applicable, a complainant may provide information to the TIXC for review.
- 7) An emergency removal may be affirmed, modified, or lifted as a result of a requested review or as new information becomes available. The TIXC will typically issue a Show Cause Meeting Determination letter to the Respondent within two (2) days of the review meeting.
- 8) There is no appeal process for emergency removal decisions.
- 9) MCCCCD will make every effort to implement the least restrictive emergency actions possible in light of the circumstances and safety concerns.

2. Employee Leave

When the Respondent is an employee, or a student employee accused of misconduct in the course of their employment, existing Human Resources' policies, regulations and employee handbooks (<https://maricopa.sharepoint.com/sites/DO/human-resources/hr-tools/Pages/policies.aspx>) for interim action are applicable.

K. False Allegations and Evidence.

Deliberately false and/or malicious accusations under the Regulation, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be referred to either the Student Conduct Code or employee conduct policies for appropriate disciplinary action.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence after being directed to preserve such evidence, or deliberately misleading an investigator or hearing Decision-maker will be subject to discipline under the appropriate student or employee regulations as well as under this Regulation for providing false testimony.

L. Resolution Process Pool

The resolution process relies on a pool of administrators ("the pool") to carry out the process. External, trained third-party neutral professionals may also be used to serve in pool roles.

1. POOL MEMBERS

The TIXC appoints the Pool, which acts with independence and impartiality, and consist of employees and trained external third parties. Members of the Pool can rotate amongst the different roles listed. MCCCCD may also designate permanent roles for individuals in the Pool. Members of the pool are trained annually, and can serve in the following roles, at the discretion of the TIXC:

- Advisor to parties

- Informal resolution facilitator
- Investigator
- Supportive Measure Appeals Decision-maker
- Complaint Dismissal Appeals Officer
- Decision-maker
- Appeal Chair

2. Training

All investigators, decision-makers, and other persons who are responsible for implementing MCCCC's Title IX regulations and procedures will receive training related to their duties promptly upon hiring or change of position that alters their duties, and annually thereafter.

II. Resolution Process

This resolution process, consisting of informal resolution or administrative resolution, is MCCCC's chosen approach to addressing sex discrimination, sex-based harassment, retaliation, and other prohibited conduct under the regulation. The process considers the parties' preferences but is ultimately determined at the TIXC's discretion.

Resolution proceedings are confidential. All persons present at any time during the Resolution Process are expected to maintain the confidentiality of the proceedings in accordance with Regulation.

A. Informal Resolution

To initiate informal resolution, a complainant or respondent may make such a request to the TIXC at any time prior to a final determination, or the TIXC may offer the option to the parties, in writing. MCCCC will obtain voluntary, written confirmation that all parties wish to resolve the matter through informal resolution before proceeding and will not pressure the parties to participate in informal resolution. Informal resolution is offered at the discretion of the TIXC and is not available in cases where an employee has been alleged to have committed sex discrimination or sex-based harassment of an elementary school or secondary school student or if such a process would conflict with federal, state, or local law.

The TIXC or member of the resolution process pool, as selected by the TIXC, will facilitate the informal resolution. The facilitator for the informal resolution process must not be the same person as the investigator or the decisionmaker in MCCCC's resolution process.

If an informal resolution option is not available or selected, MCCCC will initiate or continue an investigation and subsequent resolution process to determine whether the Regulation has been violated. It is not necessary to pursue informal resolution first in order to pursue an administrative resolution process. Any party participating in informal resolution can withdraw from the informal resolution process at any time and initiate or resume the administrative resolution process. If an investigation is already underway, the TIXC has discretion to determine if an investigation will be paused, if it will be limited, or if it will continue during the informal resolution process.

The parties may agree, as a condition of engaging in informal resolution, on what statements made or evidence shared during the informal resolution process will not be considered in the administrative resolution process, should informal resolution not be successful, unless agreed to by all parties.

Before initiation of an informal resolution process, MCCCC will provide the parties with a written Notice of Investigations and Allegations (the "NOIA"). NOIA that explains:

- The allegations of the Complaint
- The requirements of the informal resolution process.
- That, prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and to initiate or resume the MCCC'D's resolution process.
- That the parties' agreement to a resolution at the conclusion of the informal resolution process will preclude the parties from initiating or resuming the resolution process arising from the same allegations.
- The potential terms that may be requested or offered in an informal resolution agreement, including notification that an informal resolution agreement is binding only on the parties.
- What information MCCC'D will maintain, and whether and how it could disclose such information for use in its resolution process.

MCCC'D offers four categories of informal resolution:

- 1) **Supportive Resolution.** When the TIXC can resolve the matter informally by providing supportive measures (only) designed to remedy the situation. The TIXC will meet with the Complainant to determine reasonable supportive measures that are designed to restore or preserve the Complainant's access to MCCC'D's education program and activity. Such measures can be modified as the Complainant's needs evolve over time or circumstances change. If the respondent has received the NOIA, the TIXC may also provide reasonable supportive measures for the respondent as deemed appropriate. This option is available when the complainant does not want to engage the other resolution options, and the TIXC does not initiate a complaint.
- 2) **Educational Conversation.** When the TIXC can resolve the matter informally by having a conversation with the respondent to discuss the complainant's concerns and institutional expectations or can accompany the complainant in their desire to confront the conduct. The complainant(s) may request that the TIXC address their allegations by meeting (with or without the complainant) with the respondent(s) to discuss concerning behavior and institutional policies and expectations. Such a conversation is non-disciplinary and non-punitive. Respondent(s) are not required to attend such meetings, nor are they compelled to provide any information if they attend. The conversation will be documented as the informal resolution for the matter, if it takes place. In light of this conversation, or the respondent's decision not to attend, the TIXC may also implement remedial actions to ensure that regulations and expectations are clear and to minimize the risk of the recurrence of any behaviors that may not align with Regulation.
- 3) **Accepted Responsibility.** The Respondent may accept responsibility for any or all of the alleged Regulation violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all alleged violations, the ongoing process will be paused, and the TIXC will determine whether informal resolution is an option. If informal resolution is available, the TIXC will determine whether all parties and the recipient are able to agree on responsibility, restrictions, sanctions, restorative measures, and/or remedies. If so, the TIXC implements the accepted finding that the respondent is in violation of the Regulation, implements agreed-upon restrictions and remedies, and determines the appropriate responses in coordination with other appropriate administrator(s), as necessary.

This resolution is not subject to appeal once all parties indicate their written agreement to all resolution terms. When the parties cannot agree on all terms of resolution, the resolution process will either continue or resume. When a resolution is reached, the appropriate sanction(s) or responsive actions are promptly implemented to effectively stop the discrimination or harassment, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the complainant and the community.

- 4) **Alternative Resolution.** When the parties agree to resolve the matter through an alternative resolution mechanism.

MCCCD offers a variety of alternative resolution mechanisms to best meet the specific needs of the parties and the nature of the allegations. Alternative resolution may involve agreement to pursue individual or community remedies, including targeted or broad-based educational programming or training; supported direct conversation or interaction with the respondent(s); indirect action by the TIXC or other appropriate MCCCD officials; and other forms of resolution that can be tailored to the needs of the parties. Some alternative resolution mechanisms will result in an agreed-upon outcome, while others are resolved through dialogue. All parties must consent to the use of an alternative resolution approach, and the parties may, but are not required to, have direct or indirect contact during an alternative resolution process.

The TIXC may consider the following factors to assess whether alternative resolution is appropriate, or which form of alternative resolution may be most successful for the parties:

- The parties' amenability to alternative resolution
- Likelihood of potential resolution, considering any power dynamics between the parties
- The nature and severity of the alleged misconduct
- The parties' motivation to participate
- Civility of the parties
- Results of a violence risk assessment/ongoing risk analysis
- Respondent's disciplinary history
- Whether an emergency removal or other interim action is needed
- Skill of the facilitator with this type of complaint
- Complaint complexity
- Emotional investment/capability of the parties
- Rationality of the parties
- Goals of the parties
- Adequate resources to invest in alternative resolution (e.g., time, staff)

The TIXC has the authority to determine whether alternative resolution is available or successful, to facilitate a resolution that is acceptable to all parties, and/or to accept the parties' proposed resolution, usually through their advisors, often including terms of confidentiality, release, and non-disparagement.

Parties do not have the authority to stipulate restrictions or obligations for individuals or groups that are not involved in the alternative resolution process. The TIXC will determine whether additional individual or community remedies are necessary to meet the institution's compliance obligations in addition to the alternative resolution.

The TIXC maintains records of any resolution that is reached and will provide notification to the parties of what information is maintained. Failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., dissolution of the agreement and resumption of the resolution process, referral to the conduct process for failure to comply, application of the enforcement terms of the agreement). The results of complaints resolved by alternative resolution are not appealable.

B. Administrative Resolution (Investigation)

1. Resolution Timeline

MCCCD will make a good faith effort to complete the Resolution Process within a sixty to ninety (60-90) business days, including any appeals, which can be extended as necessary for appropriate cause by the TIXC, 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. MCCCD may undertake a short delay in its investigation if the following circumstances require: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions, or such circumstances as determined by the TIXC in their sole discretion.

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

If a party or witness chooses not to participate in the resolution process or becomes unresponsive, MCCCD reserves the right to continue the resolution process without their participation to ensure a prompt resolution. Non-participatory or unresponsive parties retain the rights outlined in the Regulation and the opportunity to participate in the resolution process.

MCCCD's action(s) 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.

2. Ensuring Impartiality

Any individual materially involved in the administration of the Resolution Process, including the TIXC, 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 TIXC will vet the assigned investigator(s), decision-maker(s), and appeal decision-makers for 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 TIXC 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. The TIXC's decision on allegations of bias or conflict of interest is final. If the source of the conflict of interest or bias is the TIXC, concerns should be raised with a different TIXC.

The resolution process involves an objective evaluation of all relevant inculpatory and exculpatory and not otherwise impermissible evidence, including evidence that supports that the respondent did or did not engage in a violation. A respondent is presumed not to be responsible for the reported misconduct unless and until the respondent is determined to be responsible by the applicable preponderance of the evidence standard. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness. All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to receive a written investigation report that accurately summarizes this evidence.

3. Notice of Investigation and Allegations

Prior to an investigation, the TIXC will provide the parties with a detailed NOIA. 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 charges. For climate/culture investigations that do not have an identifiable respondent, the NOIA will be sent to the department/office/program head for the area/program being investigated.

The NOIA will include:

- A meaningful summary of all of allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies/offenses implicated,
- A description of, link to, or copy of the applicable procedures
- A statement that the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence
- The name(s) of the Investigator(s), along with a process to notify the TIXC, in advance of the interview process, any conflict of interest that the Investigator(s) may have,
- A statement that MCCCCD presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the Parties will be given an opportunity to inspect and review all relevant evidence obtained during the review and comment period,
- A statement regarding MCCCCD's Regulation on retaliation,
- Statement that Parties may have an Advisor of their choosing who may accompany them through all steps of the Resolution Process and suggestions for ways to identify an Advisor,
- Information about the confidentiality of the process, including that the Parties and their Advisors (if applicable) may not share MCCCCD work product obtained through the Resolution Process
- A statement informing the parties that the MCCCCD's AR prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- Detail on how the party may request disability accommodations during the interview process,
- A link to VAWA brochure
- An instruction to preserve any evidence that is directly related to the allegations.
- A statement of the potential sanctions/responsive actions that could result
- A suggested date and time for an initial meeting (proper time will be given to allow for the selection of an Advisor)

Notice will be made in writing and will be sent via electronic mail to the parties' MCCCCD-issued email or designated accounts as indicated in official MCCCCD records. Notice is presumed to have been given upon emailing the NOIA to the Parties.

4. Appointment of Investigators

Once the decision to commence an investigation is made, the TIXC will appoint a team of two (2) investigators to investigate the allegations. Appointment of investigators typically occurs within three (3) business days of determining that an investigation should proceed.

5. The Investigation Process

All investigations should be thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary. Either party may submit a written statement to the TIXC outlining their position on the allegations.

MCCCCD may consolidate complaints against more than one respondent, or by more than one complainant against one or more respondents, when the allegations arise from the same facts or circumstances or implicate a pattern, collusion, and/or other shared or similar actions.

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

- Determine the identity and contact information of the complainant.
- Identify all offenses implicated by the alleged misconduct and notify the complainant and respondent of all specific policies implicated.
- Assist the TIXC, if needed, with conducting a prompt initial evaluation to determine if the allegations indicate a potential regulation violation.
- Work with the TIXC, as necessary, to prepare the initial NOIA. The NOIA may be amended with any additional or dismissed allegations.
- 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 the parties and witnesses.
- When participation of a party is expected, provide that party with written notification of the date, time, and location of the meeting, as well as the expected participants and purpose.
- Make good faith efforts to notify each party of any meeting or interview involving another party, in advance when possible.
- Interview the complainant and the respondent and conduct any necessary follow-up interviews with each.
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary.
- Provide each interviewed party and witness an opportunity to review and verify the investigator's summary notes (or transcript or recording) of the relevant evidence/testimony from their respective interviews and meetings.
- Allow each party the opportunity to suggest witnesses and questions they wish the investigator(s) to ask of another party and/or witnesses. Document which questions were asked with a rationale for any changes or omissions in the investigation report.
- Where possible, complete the investigation promptly and without unreasonable deviation from the intended timeline.
- Provide the parties with regular status updates throughout the investigation.
- Prior to the conclusion of the investigation, provide the parties and their respective advisors with a list of witnesses whose information will be used to render a finding.
- Ask the parties to provide a list of questions they would like asked of the other party or any witnesses. The investigator will ask those questions deemed relevant, and for any question deemed not relevant, will provide a rationale for not asking the question.
- Write a draft investigation report that gathers, assesses, and synthesizes the evidence, accurately summarizes the investigation and party and witness interviews, and provides all relevant evidence.
- Provide the parties and their respective advisors an electronic copy of the draft investigation report as well as an opportunity to inspect and review all relevant evidence obtained as part of the investigation for a review and comment period of ten (10) business days so that each party may meaningfully respond to the evidence. The parties may elect to waive all or part of the review period.
- The investigator may share the investigation report with the TIXC and/or legal counsel for their review and feedback.

After an interview, parties and witnesses will be asked to verify the accuracy of the recording, transcript, or summary of their interview. They may submit changes, edits, or clarifications. If the parties or witnesses do not respond within the time period designated for verification, objections to the accuracy of the recording, transcript, or summary will be deemed to have been waived, and no changes will be permitted.

6. Role and Participation of Witnesses in the Investigation

Witnesses (as distinguished from the parties) who are employees or students of MCCCDC are required to cooperate with and participate in MCCCDC'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 the Regulation and Procedure and may warrant discipline. Student witnesses and witnesses from outside the MCCCDC community cannot be required to participate but are encouraged to cooperate with MCCCDC investigations and to share what they know about a complaint.

While in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. MCCCDC will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Parties and witnesses may also provide written statements or respond to written questions in addition to being interviewed.

7. Recording of Interviews

No unauthorized audio or video recording of any kind is permitted during investigation meetings.

8. Evidentiary Considerations in the Investigation

The investigator(s) and the decision-maker(s) will only consider evidence that is deemed relevant and not otherwise impermissible. Relevant evidence is that which may aid in determining whether the allegation occurred, or whether the behavior constitutes a violation of the regulation.

The investigation does not consider:

- incidents not directly related to the possible violation, unless they evidence a pattern;
- the character of the parties; or
- 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.

5. Respondent Admits Responsibility

At any point in the proceedings, if a respondent elects to admit to the charged violations and waive further process, the decision-maker is authorized to accept that admission, adopt it as their finding/final determination, and administer sanctions. This would waive the respondent's right to appeal. If the respondent rejects the finding/final determination/sanctions, or does not admit to all conduct charged, the resolution process continues to its conclusion. The complainant retains their right to appeal a determination when a respondent admits responsibility.

C. Hearing Resolution Process

1. Referral for Hearing

The TIXC will refer the matter for a hearing, once the final investigative report is shared with the parties.

The hearing cannot be less than ten (10) business days from the conclusion of the investigation, when the final investigation report is made available to the Parties and the Decision-maker for review and comment, unless all parties, and the Decision-maker agrees to an expedited timeline. This agreement must be in writing.

2. Hearing Decision-maker Composition

The TIXC will select a Decision-maker. The MCCCCD will designate a single decision-maker. The single Decision-maker will also be the Chair of the hearing. The Decision-maker will not have had any previous involvement with the investigation. The Decision-maker is an out-sourced position. The Decision-maker will not be an MCCCCD employee.

3. Evidentiary Considerations in the Hearing

Any evidence that the Decision-maker determines is relevant and credible may be considered. The hearing does not consider:

- incidents not directly related to the possible violation, unless they evidence a pattern;
- the character of the parties; or
- questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process.

The parties, if they so choose, may submit a written impact statement prior to the hearing for the consideration of the Decision-maker at the sanction stage of the process when a determination of responsibility is reached.

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 Regulation as alleged.

4. Notice of Hearing

No less than ten (10) business days prior to the hearing, the TIXC will send notice of the hearing to the parties via email to the individual MCCCCD-issued email address. Once emailed, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities. Thoroughness and fairness are the priorities of any Title IX hearing process. Hearings are generally scheduled for two (2) hours, but can be extended, as needed at the discretion of the Decision-maker, to ensure that both parties are able to present the information relevant to their position. (e.g., complicated fact pattern, numerous witnesses, etc.).
- Any technology that will be used to facilitate the hearing.

- A list of all those who will attend the hearing, along with an invitation to object to the Decision-maker on the basis of demonstrated bias. This must be raised with the TIXC at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. For compelling reasons, the Decision-maker 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 TIXC if they do not have an Advisor, and the MCCCCD will appoint one. Each party must have an Advisor present. There are no exceptions.
- An invitation to each party to submit to the Decision-maker an impact statement. Pre-hearing that the Decision-maker will review during any sanction determination.
- An invitation to contact the TIXC to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- Direction that the parties may not 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 the Regulation) 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 the MCCCCD and remain within the 60-90 business day goal for resolution.

In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student facing charges under the Regulation is not in good standing to graduate.

5. Virtual Hearings

All hearings will occur virtually by use of technology, specifically WebEx or Zoom technology. Each party will be located in a separate room from the Decision-maker, but will be able to see and hear each other. Witnesses will testify in the same room as the Decision-maker, but not the room where the parties and their Advisors sit. The TIXC will arrange to use technology to allow remote testimony without compromising the fairness of the hearing.

6. Pre-Hearing Preparation

The Decision-maker, or designee, after any necessary consultation with the parties, Investigator(s) and/or TIXC, 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) business days prior to the hearing. During the ten (10) business day period prior to the hearing, the parties have the opportunity to review and comment on the final investigation report and available evidence.

The Decision-maker, or designee will also provide the parties a copy of the pre-hearing preparation checklist/document.

7. Hearing Procedures

At the hearing, the Decision-maker has the authority to hear and make determinations on all allegations of sex discrimination, sex-based harassment, retaliation, and Other Prohibited Conduct under the Regulation and may also hear and make determinations on any additional alleged violations that have occurred in

concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations which may not specifically fall within the Regulation.

Participants at the hearing will include the Decision-maker, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties, Advisors to the parties, any called witnesses, the TIXC and anyone providing authorized accommodations or assistive services.

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

The Decision-maker will facilitate questioning of the Parties and witnesses first by the Decision-maker and then by the Parties through the Decision-maker.

The Decision-maker 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 from attendance.

8. 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 parties may agree to hear the allegations jointly. All parties must agree to a joint hearing. If one party does not agree, the default will be to hold the hearings separately.

In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged Regulation violation.

9. Refusal to Submit to Cross-Examination and Inferences

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 violations other than those under the Regulation are considered at the same hearing, the Decision-maker may consider all evidence it deems relevant.

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

10. Recording Hearings

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

The Decision-maker, the parties, their Advisors, and appropriate administrators of MCCCCD will be permitted to listen to the recording in a controlled environment determined by the TIXC. No person will be given a copy or be allowed to make a copy of the recording.

11. Deliberation, Decision-making, and Standard of Proof

The Decision-maker will deliberate alone to determine, by a preponderance of the evidence, whether the Respondent is responsible or not responsible for the Regulation violation(s) in question. The deliberation period is not to exceed five (5) business days. The Decision-maker may consider the previously submitted party impact statements in determining appropriate sanction(s), when there is a finding of responsibility as to one or more of the allegations.

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

The Decision-maker will then prepare a written deliberation statement and deliver it to the TIXC, detailing the determination, rationale, the evidence used in support of its determination, the evidence disregarded, credibility assessments, and any sanctions. This report typically should not exceed three (3) to five (5) pages in length and must be submitted electronically to the TIXC within two (2) business days of the end of deliberations, unless the TIXC grants an extension. If an extension is granted, the TIXC will notify the parties in writing of the extension.

12. Sanctions

Factors the decision-maker may consider when determining sanctions and responsive action 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 sanctions/responsive actions to bring an end to the sex discrimination, sex-based harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of the sex discrimination, sex-based harassment, and/or retaliation
- The need to remedy the effects of the sex discrimination, sex-based harassment, and/or retaliation on the Complainant and the community
- The impact on the parties
- The respondent's acceptance of responsibility
- Any other information deemed relevant by the Decision-maker

The sanctions will be implemented as soon as is feasible once a determination is final, either upon the outcome of any appeal or the expiration of the window to appeal, without an appeal being requested.

The sanctions described in this Procedure are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

A. Student Sanctions

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

1. **Warning.** A formal statement that the conduct was unacceptable and a warning that further violation of any MCCC AR, procedure, or directive will result in more severe sanctions/responsive actions.
2. **Required Counseling.** A mandate to meet with and engage in external counseling to better comprehend the misconduct and its effects.
3. **Restrictions.** A student may be restricted in their activities, including, but not limited to, being restricted from locations, programs, participation in certain activities or extracurriculars, study abroad, or holding leadership roles in student organizations.

4. **Probation:** An official sanction for violation of Regulation, providing for more severe disciplinary sanctions in the event that the student is found in violation of any policy, regulation, 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.
5. **Suspension:** Separation of student status from a college, or one or more of its facilities for a definite period of time not to exceed two years and/or until specific return criteria are met. Eligibility to return may be contingent upon satisfaction of specific conditions noted at the time of suspension, on successfully applying for readmission, or upon a general condition that the student is eligible to return if the institution determines it is appropriate to re-enroll/readmit the student. The student is typically required to vacate institutional property within 24 hours of notification of the action, though this deadline may be extended at the discretion of the TIXC or other appropriate official. During an institution-wide suspension, the student is banned from all district property, functions, events, and activities unless they receive prior written approval from an appropriate institutional official. This sanction may be enforced with a trespass action, as necessary. This sanction may be noted as a Disciplinary Suspension on the student's official academic transcript, per institutional AR and/or state law. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at MCCCDC.
6. **Expulsion:** Permanent separation of student status and revocation of rights to be on any MCCCDC campus for any reason or to attend MCCCDC-sponsored events. This action may be enforced with a trespass action, as necessary. This sanction may be noted as Disciplinary Expulsion on the student's official academic transcript, per policies, regulations and/or state law.
7. **Withholding Diploma:** MCCCDC may withhold a student's diploma for a specified period of time and/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.
8. **Revocation of Degree:** MCCCDC reserves the right to revoke a degree previously awarded from MCCCDC for fraud, misrepresentation, and/or other violation of MCCCDC policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
9. **Organizational Sanctions:** Deactivation, loss of recognition, loss of some or all privileges (including MCCCDC registration) for a specified period of time.
10. **Other Actions:** In addition to or in place of the above sanctions, MCCCDC may assign any other sanctions as deemed appropriate.

B. Employee Sanctions

Responsive actions for an employee who has engaged in sex discrimination, sex-based harassment and/or retaliation include:

- Warning – Verbal or Written
- Performance Improvement Plan/Management Process
- Required Counseling
- Required Training or Education
- Probation
- Loss of Annual Pay Increase
- Loss of Oversight or Supervisory Responsibility
- Denial of pay increase/pay grade
- Transfer
- Shift or schedule adjustments
- Reassignment
- Demotion
- Assignment to a new supervisor
- Restriction of stipends, research, and/or professional development resources

- Suspension/administrative leave with pay
- Suspension/administrative leave without pay
- Termination
- Other Actions: In addition to or in place of the above sanctions, MCCCCD may assign any other sanctions as deemed appropriate.

13. Notice of Outcome

The TIXC will prepare a notice of outcome, which will include the finding for each alleged violation, applicable sanction(s) MCCCCD is permitted to share pursuant to state or federal law, and a detailed rationale, written by the decision-maker, supporting the findings to the extent MCCCCD is permitted to share under federal or state law. The notification will also detail the parties' equal rights to appeal, the grounds for appeal, the steps to request an appeal, and when the determination is considered final if no party appeals. The TIXC will provide the notice of outcome to the parties and their advisors within five (5) business days of the conclusion of the resolution process. The notice of outcome will be shared with the parties simultaneously, or without significant time delay between notifications.

Notification will be made in writing and will be emailed to the parties' MCCCCD-issued email or designated email account. Once emailed, notice is presumptively delivered.

14. Withdrawal or Resignation Before Complaint Resolution

Students: If a student is a Respondent in a pending matter alleging a violation of the Regulation, MCCCCD may place a hold on a student's ability to graduate and/or to receive an official transcript/diploma. During the resolution process, MCCCCD may put a hold on a responding student's educational record that a disciplinary matter is pending.

Should a student decide to not participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from MCCCCD, the resolution process ends.

MCCCCD will still provide reasonable supportive or remedial measures as deemed necessary to address safety and/or remedy any ongoing effects of the alleged sex discrimination, sex-based harassment, and/or retaliation.

A student who withdraws or leaves while the process is pending may not return to any MCCCCD college until the complaint is resolved and any sanctions imposed are satisfied. Such exclusion applies to all campuses of MCCCCD. A hold will be placed on their ability to be readmitted. They may also be barred from MCCCCD property and/or events. If the student indicates they will not return, the TIXC has discretion to dismiss the complaint. The registrar, office of admissions, Human Resources or other appropriate department may be notified, accordingly.

If the student respondent takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely. If found in violation, that student is not permitted to return to MCCCCD unless and until all sanctions, if any, have been satisfied.

Employees: Should an employee Respondent resign with unresolved allegations pending, the resolution process ends. MCCCCD will still provide reasonable supportive or remedial measures as deemed necessary to address safety and/or remedy any ongoing effects of the alleged sex discrimination, sex-based harassment, and/or retaliation.

The employee who resigns with unresolved allegations pending is not eligible for rehire with MCCCCD, and the records retained by the TIXC will reflect that status. Human Resources will be notified and make the appropriate notation on its list of people who are not permitted to be rehired. All MCCCCD responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

Should an employee respondent decide not to participate in the resolution process, the process proceeds absent their participation to a reasonable resolution.

15. Appeal of the Determination

A. Grounds for Appeal

Appeals are limited to the following grounds:

- 1) Procedural irregularity that would change the outcome of the matter;
- 2) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that WOULD affect the outcome of the matter; and
- 3) An allegation that the TIXC, Investigators, or Decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that would change the outcome of the matter.

B. Request for Appeal

Any party may submit a written request for appeal to the TIXC within five (5) days of the delivery of the Notice of Outcome. Once the five (5) days have passed, the matter will be deemed closed.

The request for appeal will be forwarded to the Provost or Chief Academic officer or designee, acting as the Appeal Chair, for consideration to determine if the request meets the grounds for appeal. This is not a review of the merits of the appeal, but solely a determination as to whether the request could reasonably be construed to meet the grounds and is timely filed. No Appeal Chair will have been previously involved in the resolution process for the complaint, including in any supportive measure challenge or dismissal appeal that may have been decided earlier in the process.

The Appeal Chair will deny any request for appeal that does not meet the grounds and the parties and their advisors will be simultaneously notified in writing of the denial and the rationale. Denials based on lack of grounds shall be communicated to the requesting party within five (5) days of request for appeal receipt by the appeal decision-maker.

If any of the information in the Request for Appeal meet the grounds in this policy, then the appeal chair will:

- 1) Notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the investigators and/or the original Decision-maker.
- 2) Provide the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker a copy of the appeal request with the approved grounds outlined.
- 3) Provide the other party(ies) and their Advisors, the Title IX Coordinator, and when appropriate, the investigators and/or the original Decision-maker five (5) days to submit a response to the portion of the appeal that was approved and involves them.
- 4) Collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and render a decision in no more than fifteen (15) days from the date the Request for Appeal was filed, barring exigent circumstances. All decisions apply the preponderance of the evidence.

The non-appealing party (if any) may also choose to appeal at this time. If so, that request for appeal will be reviewed by the appeal decision-maker to determine if it meets the grounds and will either be approved or denied. If approved, it will be forwarded to the party who initially requested an appeal, the TIXC, and the investigator(s) and/or decision-maker, as necessary, who will submit their responses, if any, within five (5) business days. Any such responses will be circulated for review and comment by all parties. If denied, the parties and their advisors will be notified accordingly, in writing.

No party may submit any new requests for appeal after this time period.

C. Appeal Determination Process

In most cases, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Appeal Chair will deliberate the merits of the appeal as soon as is practicable.

Appeal decisions are to be deferential to the original determination, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so. All decisions apply the preponderance of the evidence standard of proof.

An appeal is not an opportunity for the Appeal Chair to substitute their judgment for that of the original Decision-maker merely because they disagree with the finding and/or sanction(s).

D. Appeal Outcome

An appeal may be granted or denied. Appeals that are granted should normally be remanded (or partially remanded) to the original Investigator(s) and/or Decision-maker with corrective instructions for reconsideration. In rare circumstances where an error cannot be cured by the original Investigator(s) and/or Decision-maker or the TIXC (as in cases of bias), the Appeal Decision-maker may order a new investigation and/or a new determination with new Pool members serving in the Investigator and Decision-maker roles.

A Notice of Appeal Outcome letter ("Appeal Outcome") will be sent to all Parties simultaneously, or without significant time delay between notifications. The Appeal Outcome will specify the finding on each appeal ground, any specific instructions for remand or reconsideration, all sanction(s) that may result which the Recipient is permitted to share according to federal or state law, and the rationale supporting the essential findings to the extent the Recipient is permitted to share under federal or state law.

Written notification may be delivered by emailed to the Parties' MCCCDC-issued email or otherwise approved account. Once emailed, the Appeal Outcome will be presumptively delivered.

Once an appeal is decided, the outcome is final and constitutes the Final Determination; further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new determination). When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new finding or sanction, that finding or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.

If a remand results in a new determination that is different from the appealed determination, that new determination can be appealed, once, on any of the available appeal grounds.

E. Sanctions Status During the Appeal

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be continued or reinstated, until the appeal determination is made.

If any of the sanctions are to be implemented immediately post-determination, but pre-appeal, then the emergency removal procedures (detailed above) for a “show cause” meeting on the justification for doing so must be permitted within three (3) business days of implementation.

MCCCD may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

III. Post-Administrative Resolution Process

A. Long-Term Remedies/Other Actions

Following the conclusion of the Resolution Process, and in addition to any sanctions implemented or informal resolution terms, the TIXC may implement additional long-term remedies or actions with respect to the Parties and/or MCCCD campus community that are intended to stop the sex discrimination, sex-based harassment, and/or retaliation, remedy the effects, and prevent recurrence.

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

- Referral to community services including counseling and health services
- Referral to the Employee Assistance Program
- Education to the individual and/or the community
- Course and registration adjustments, such as retroactive withdrawals
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- AR modification and/or training
- Implementation of long-term contact limitations between the Parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the TIXC, certain long-term support or measures may also be provided to the parties even if no AR violation is found. When no AR violation is found, the TIXC will address any remedies owed by MCCCD to the Respondent to ensure that the Respondent did not experience effective denial of educational access.

MCCCD will maintain the confidentiality of any Party subject to any long-term remedies/actions/measures, provided doing so does not impair MCCCD’s ability to provide these services.

B. Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions

All respondents are expected to comply with the assigned sanctions, responsive actions, corrective actions, and/or informal resolution terms within the timeframe specified by the final decision-maker, (including the appeal chair) or the informal resolution agreement.

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from MCCCD.

A suspension imposed for non-compliance with sanctions will only be lifted when compliance is achieved to the satisfaction of the TIXC.

C. Record Maintenance and Access

All records, in any medium, created under Title IX, are considered private or confidential, in accordance with FERPA and the directive from the department of education to maintain the confidentiality of records related to discrimination, harassment, and retaliation. These records may be shared internally with those who have a legitimate educational interest and will be shared with the parties to a complaint under applicable federal and/or state law. The TIXC controls the dissemination and sharing of any records under its control.

Types of records covered under this policy

Records pertaining to this policy include, but are not limited to:

- The complaint
- NOIAs
- Documentation of notice to the institution, including incident reports
- Anonymous reports later linked to a specific incident involving known parties
- Any documentation supporting the initial evaluation
- Investigation-related evidence (e.g., physical and documentary evidence collected and interview transcripts)
- Dismissal-related documentation and appeals
- Documentation related to emergency removals, leaves, and interim actions and challenges
- Documentation related to the resolution process
- The final investigation report and file
- Remedy-related documentation
- Supportive measures-related documentation
- Appeal-related documentation
- Informal resolution records
- Outcome notices
- Any other records typically maintained by MCCCCD as part of the complaint file

Drafts and working files: preliminary drafts and “working files” are not considered records that MCCCCD must maintain, and these are typically destroyed during the course of an investigation or at the conclusion of the resolution process. They are preliminary versions of records and other documents that do not state a final position on the subject matter reviewed or are not considered to be in final form by their author and/or the TIXC. Sole possession records maintained as such in accordance with FERPA are also included in this category. All drafts of investigation reports shared with the parties are maintained.

Record storage. All records must be stored in digital format and maintained by the title ix coordinator. The complete file must be transferred to the title ix coordinator, typically within fourteen (14) business days of the complaint resolution (including any appeal), if the file is not already maintained within the title ix coordinator. Security protocols must be in place to preserve the integrity and privacy of any parts of any record that are maintained in by the TIXC during the pendency of an investigation.

A copy of records showing compliance with any applicable Clery Act/violence against women act (VAWA) requirements will be maintained along with the complaint file by the TIXC.

Title IX training materials

MCCCD will also maintain copies of the slides or other materials from all Title IX training for the resolution process pool members and employees. Trainings occurring prior to August 1, 2024, are posted online <https://district.maricopa.edu/consumer-information/title-ix/training-and-resources>, and trainings occurring after August 1, 2024, are available for review upon request to the TIXC.

Record retention

All records created and maintained pursuant to the policy will be retained by the TIXC for a minimum of seven (7) years in database, digital, and/or paper form. Except for records pertaining to TIXC and the Clery Act/VAWA, the TIXC may authorize destruction or expungement acting under their own discretion, or in accordance with a duly executed and binding claim settlement and/or by court or government order. MCCCD will also maintain any and all records in accordance with state and federal laws. MCCCD will follow the destruction of records policy as outlined by the state of Arizona.

Record access

Access to records created pursuant to this policy or housed with the TIXC is strictly limited to the TIXC and any person they authorize in writing, at their discretion, or via permission levels within the database. Those who are granted broad access to the TIXC records are expected to access only those pertinent to their scope, work, or specific assignment. Anyone who accesses such records without proper authorization may be subject to an investigation and possible discipline/sanction. The discipline/sanction for unauthorized access of records covered by this policy will be at the discretion of the appropriate disciplinary authority, consistent with other relevant MCCCD policies and procedures.

Student parties may request access to their complaint file. MCCCD will provide access or a copy within 45 days of the request. Appropriate redactions of personally identifiable information may be made before inspection, or any copy is shared.

D. Revision of this Procedure

This Procedure will be reviewed and updated as needed by the TIXC, in consultation with any other stakeholders deemed necessary by the TIXC. MCCCD 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 TIXC may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party. 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 Procedure is effective August 1, 2024.

BASED ON THE 2024 ATIXA TITLE IX MODEL POLICY AND PROCEDURES (AMPP).

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