

BP 2.18
Title IX Sex Discrimination and Harassment

Legal Authority 1 C SBCCC 200.94

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Policy

I. Nondiscrimination Policy

McDowell Technical Community College does not discriminate on the basis of sex and prohibits sex discrimination in any Education Program or Activity that it operates, as required by Title IX, including in admission and employment. Sex discrimination includes discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

II. Notice of Nondiscrimination

McDowell Technical Community College, in compliance with and as required by Title IX of the Education Amendments Act of 1972 and its implementing regulations (“Title IX”) and other civil rights laws, as well as in furtherance of its own values as a higher education institution, does not discriminate in any Education Program or Activity that it operates on the basis of race, color, national origin, sex, sex stereotypes, sex characteristics, sexual orientation, gender, gender identity, gender expression, pregnancy or related conditions, disability, age, religion, veteran status, or any other characteristic or status protected by applicable local, state, or federal law in admission, treatment, access to, or employment in, its programs and activities.

Discrimination and harassment are antithetical to the values and standards of the McDowell Technical Community College community; are incompatible with the safe, healthy environment that the McDowell Technical Community College community expects and deserves; and will not be tolerated. McDowell Technical Community College is committed to providing programs, activities, and an education and work environment free from discrimination and harassment. McDowell Technical Community College is also committed to fostering a community that promotes prompt reporting and fair and timely resolution of those behaviors.

Inquiries about Title IX may be referred to McDowell Technical Community College’s Title IX Coordinator, the U.S. Department of Education’s Office for Civil Rights, or both.

McDowell Technical Community College’s Title IX Coordinator is Breanna Wilson, Cedar Building (11), bdrose59@go.mcdowelltech.edu, and (828) 652-0618.

McDowell Technical Community College’s nondiscrimination policy can be located on the college’s website at <https://mcdowelltech.edu/about-us/planning-and->

[accountability/policy-manual/](https://mcdowelltech.edu/about-us/planning-and-accountability/policy-manual/). The grievance procedures can be located at <https://mcdowelltech.edu/about-us/planning-and-accountability/procedures-manual/>.

To report information about conduct that may constitute sex discrimination or make a Complaint of sex discrimination under Title IX, please refer to College Procedure CP 2.18.1 located at <https://mcdowelltech.edu/about-us/planning-and-accountability/procedures-manual/>.

Individuals also may make inquiries regarding discrimination or harassment to the U.S. Department of Education's Office for Civil Rights by contacting the District of Columbia Office, 400 Maryland Avenue, SW, Washington, DC 20202-1475; Phone: 800-42. 481; email: OCR@ed.gov.

III. Provisions Applicable to Both Section IV. and Section V. Grievance Procedures

Reporting and Period of Limitations

Any person may report sex discrimination or Sex-Based Harassment in person, by mail, by telephone, or by electronic mail, using the contact information for the Title IX Coordinator listed in this document, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours).

McDowell Technical Community College requires all employees and other members of the McDowell Technical Community College community to promptly report concerns regarding suspected or known sex discrimination and/or Sex-Based Harassment to the Title IX Coordinator.

Additionally, McDowell Technical Community College has designated the following employees as Confidential Employees: Aprille Bailey, Registrar.

Information about sex discrimination or harassment shared with these Confidential Employees typically will not be reported to other McDowell Technical Community College personnel (including the Title IX Coordinator), to the Respondent, or to others, unless the disclosing individual gives their consent to the disclosure or the law requires it (as may be the case with abuse involving a minor or under conditions involving imminent physical harm, for example). Confidential Employees may report non-identifying statistical information to the Title IX Coordinator for recordkeeping and compliance purposes.

McDowell Technical Community College requires Confidential Employees to explain to any person who informs them of conduct that reasonably may constitute sex discrimination: (1) the employee's status as confidential, including the circumstances in which the employee is not required to notify the Title IX Coordinator about conduct that reasonably may constitute sex discrimination; (2) how to contact MTCC's Title IX Coordinator and how to make a Complaint of sex discrimination; and (3) that the Title IX Coordinator may be able to offer and coordinate Supportive Measures, as well as initiate an informal resolution process or an investigation under MTCC's Title IX grievance procedures.

McDowell Technical Community College will address allegations of sex discrimination and Sex-Based Harassment appropriately no matter the length of time that has passed since

the alleged conduct. However, McDowell Technical Community College strongly encourages prompt reporting to preserve evidence for a potential legal or disciplinary proceeding. Delay may compromise the ability to investigate, particularly if the individuals involved in the alleged conduct are no longer McDowell Technical Community College Students or employees.

Public Awareness Events

To the extent information about conduct that reasonably may constitute sex discrimination (including Sex-Based Harassment) under Title IX was provided by a person during a public event to raise awareness about sex discrimination that was held either on campus or through an online platform sponsored by McDowell Technical Community College, McDowell Technical Community College is not obligated to act in response to the information, unless it indicates an imminent and serious threat to the health or safety of a Complainant, any Students, employees, or other persons. McDowell Technical Community College will use this information, however, to inform its efforts to prevent sex discrimination, including by providing tailored training to address alleged sex discrimination in a particular part of its Education Program or Activity or at a specific location when information indicates there may be multiple incidents of sex discrimination.

Effect of Respondent Withdrawal, Graduation, or Resignation During Grievance Process

At the discretion of McDowell Technical Community College, a Respondent who withdraws or resigns from McDowell Technical Community College during the pendency of a grievance process under the grievance procedures set forth below may be barred from McDowell Technical Community College property and McDowell Technical Community College activities and events and may be ineligible for re-enrollment or to be re-hired. If a Respondent completes all requirements to graduate during the grievance process, McDowell Technical Community College may hold the Respondent's diploma until full resolution of the Complaint.

Privacy and Disclosure

Except as may be permitted by FERPA or as required by law or to carry out any investigation or resolution of sex discrimination and/or Sex-Based Harassment allegations, McDowell Technical Community College will keep private the identity of any individual who has made a report or Complaint of sex discrimination and/or Sex-Based Harassment, any Complainant, any Respondent, and any witness.

McDowell Technical Community College may report alleged sex discrimination (including Sex-Based Harassment) to local law enforcement if warranted by the nature of the allegations at issue, and McDowell Technical Community College administrators will share information regarding alleged sex discrimination, as appropriate and necessary, in order to address and resolve the allegation(s) at issue, prevent the recurrence of similar sex discrimination, and address the effects of the Sex-Based Harassment. Additionally, information regarding alleged sex discrimination may be used as a statistical, anonymous report for data collection purposes under the Clery Act.

To comply with FERPA, Title IX, and other applicable laws and to provide an orderly process for the presentation and consideration of Relevant information without undue

intimidation or pressure, grievance processes carried out under these Title IX Grievance Procedures are not open to the general public. Accordingly, documents prepared in connection with such processes; documents, statements, or other information introduced in interviews, meetings, and proceedings; and the final outcome letter may not be disclosed outside of those processes, except as may be required or authorized by law.

As permitted by and subject to the limitations of FERPA, McDowell Technical Community College reserves the right to notify parent(s) or guardian(s) of a Student Respondent of the outcome of any investigation involving that Respondent, redacting names of any other Students who do not consent to the disclosure of their information. At the written request of a Party, McDowell Technical Community College may include a Party's advisor on communications and share access to documents, including the investigation report. This access is subject to the advisor's acknowledgment and agreement to maintain the confidentiality of the documents.

While McDowell Technical Community College strongly encourages Parties to maintain privacy in connection with a grievance process, McDowell Technical Community College does not prohibit Parties from discussing the allegations under investigation or in any way inhibit the Parties from gathering or presenting Relevant evidence. In addition, McDowell Technical Community College's policy does not prohibit disclosure of the final outcome letter by either the Complainant or the Respondent.

Academic Freedom

McDowell Technical Community College affirms its commitment to academic freedom but notes that academic freedom does not allow any form of sex discrimination, including Sex-Based Harassment. McDowell Technical Community College recognizes that an essential function of education is a probing of opinions and an exploration of ideas, some of which, because they are controversial, may cause Students and others discomfort. This discomfort, as a product of free academic inquiry within a faculty member's area(s) of expertise, shall in no way be considered or construed to constitute sex discrimination or Sex-Based Harassment. Academic inquiry may involve teaching, research, and extramural speech. Furthermore, nothing in this document shall be interpreted to prohibit bona fide academic requirements for a specific McDowell Technical Community College program or activity. When investigating Complaints that a Party or the Title IX Coordinator believes may involve issues of academic freedom, the Title IX Coordinator will consult with the Vice President for Learning and Student Services with respect to contemporary academic practices and standards.

Documentation

McDowell Technical Community College will retain documentation (including but not limited to any Complaint, notifications, recording or transcripts of interviews, investigative report, written findings of fact, petitions for appeal, notifications of decisions (including the final outcome letter), audio recordings of hearings, and written communication with the Complainant and Respondent), for no less than seven years.

Amnesty

McDowell Technical Community College considers the reporting and adjudication of sex discrimination and Sex-Based Harassment to be of paramount importance. McDowell Technical Community College does not condone underage drinking or the use of illegal drugs; however, McDowell Technical Community College may extend amnesty to Complainants, Respondents, witnesses, and others involved in a Title IX grievance process from punitive sanctioning for illegal use of drugs and/or alcohol when evidence of such use is discovered or submitted in the course of a Title IX grievance process. Similarly, McDowell Technical Community College may, in its discretion, provide amnesty for other conduct code violations that are discovered in the course of a grievance process.

Individuals with Disabilities

McDowell Technical Community College will make arrangements to ensure that individuals with disabilities are provided appropriate adjustments, to the extent necessary and available, to participate in McDowell Technical Community College's grievance processes. Student requests for accommodation must be made to the Disabilities Coordinator.

IV. Grievance Procedures for General Complaints of Sex Discrimination¹

McDowell Technical Community College has adopted grievance procedures that provide for the prompt and equitable resolution of Complaints made by Students, employees, or other individuals who are participating or attempting to participate in its Education Program or Activity, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX or the Title IX regulations.

Complaints

The following people have a right to make a Complaint of sex discrimination, including Complaints of Sex-Based Harassment, requesting that McDowell Technical Community College investigate and make a determination about alleged discrimination under Title IX:

- A "Complainant," which includes:
- A Student or employee of McDowell Technical Community College who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or

¹ This Section IV. addresses McDowell Technical Community College's grievance procedures for Complaints of sex discrimination *other than* Complaints of Sex-Based Harassment involving a Student Complainant or Student Respondent. The grievance procedures for Complaints of Sex-Based Harassment involving a Student Complainant or Student Respondent are addressed in Section V. and are similar to, but different in important respects from, those in Section IV. McDowell Technical Community College's] Title IX Coordinator is responsible for determining whether Section IV. or Section V. applies to a given Complaint, based on the identities of the Parties and on how the allegations of the Complaint compare to the specific definition of Sex-Based Harassment contained in this document's Appendix.

- A person other than a Student or employee of McDowell Technical Community College who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at a time when that individual was participating or attempting to participate in McDowell Technical Community College's Education Program or Activity;
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a Complainant; or
- McDowell Technical Community College's Title IX Coordinator.

Note that a person is entitled to make a Complaint of Sex-Based Harassment only if they themselves are alleged to have been subjected to the Sex-Based Harassment, if they have a legal right to act on behalf of such person, or if the Title IX Coordinator initiates a Complaint.

With respect to Complaints of sex discrimination other than Sex-Based Harassment, in addition to the people listed above, the following persons have a right to make a Complaint:

- Any Student or employee McDowell Technical Community College; or
- Any person other than a Student or employee who was participating or attempting to participate in McDowell Technical Community College's Education Program or Activity at the time of the alleged sex discrimination.

Initiation of Complaint by Title IX Coordinator

In the absence of a Complaint or the withdrawal of any or all of the allegations in a Complaint, and in the absence or termination of an informal resolution process, the Title IX Coordinator will determine whether to initiate a Complaint of sex discrimination.

To make this fact-specific determination, the Title IX Coordinator must consider, at a minimum, the following factors:

- (1) The Complainant's request not to proceed with initiation of a Complaint;
- (2) The Complainant's reasonable safety concerns regarding initiation of a Complaint;
- (3) The risk that additional acts of sex discrimination would occur if a Complaint is not initiated;
- (4) 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;
- (5) The age and relationship of the Parties, including whether the Respondent is an employee of McDowell Technical Community College;
- (6) The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals;

(7) The availability of evidence to assist a decision maker in determining whether sex discrimination occurred; and

(8) Whether McDowell Technical Community College could end the alleged sex discrimination and prevent its recurrence without initiating its Title IX grievance procedures.

If, after considering these and other Relevant factors, the Title IX Coordinator determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the Complainant or other person, or that the conduct as alleged prevents McDowell Technical Community College from ensuring equal access on the basis of sex to its Education Program or Activity, the Title IX Coordinator may initiate a Complaint.

If initiating a Complaint, the Title IX Coordinator will notify the Complainant prior to doing so and appropriately address reasonable concerns about the Complainant's safety or the safety of others, including by providing Supportive Measures and, regardless of whether a Complaint is initiated, taking other appropriate prompt and effective steps, in addition to steps necessary to effectuate the Remedies provided to an individual Complainant, if any, to ensure that sex discrimination does not continue or recur within McDowell Technical Community College's Education Program or Activity.

A Title IX Coordinator is not required to consider initiating a Complaint upon being notified of conduct that may constitute sex discrimination if the Title IX Coordinator reasonably determines that the conduct as alleged could not constitute sex discrimination under Title IX.

Complaint Consolidation

McDowell Technical Community College may consolidate Complaints of sex discrimination against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against another Party, when the allegations of sex discrimination arise out of the same facts or circumstances; provided, however, that the affected Parties consent to the disclosure of their education records in accordance with FERPA requirements. When more than one Complainant or more than one Respondent is involved, references below to a Party, Complainant, or Respondent include the plural, as applicable.

Complaint Processing Parameters

McDowell Technical Community College will treat Complainants and Respondents equitably.

McDowell Technical Community College requires that any Title IX Coordinator, investigator, or decision maker not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

As expressly permitted by Title IX, under these grievance procedures the investigator and decision maker is the same person and may either be the Title IX Coordinator or someone so designated by the Title IX Coordinator. And, as set forth below, the Parties have an

opportunity to challenge the participation of the investigator/decision maker for alleged conflict of interest or bias.

McDowell Technical Community College presumes that the Respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of its grievance procedures.

McDowell Technical Community College has established the following timeframes for the major stages of the grievance procedures:

- Decision whether to dismiss or investigate a Complaint within 15 business days after the Title IX Coordinator's receipt of the Complaint;
- Completion of any investigation within 45 business days after the Title IX Coordinator's receipt of the Complaint;
- Issuance of any responsibility determination within 60 business days after the Title IX Coordinator's receipt of the Complaint; and
- Decision on any appeal within 15 business days after the Title IX Coordinator's receipt of the Party's appeal materials.

The timelines set forth above may be altered for good cause with written notice to the Parties of any delay or extension and the supporting reasons. Good cause may include considerations such as the absence of a Party, a Party's advisor, or a witness; concurrent law enforcement activity; natural disasters, pandemic restrictions, and similar occurrences; or the need for language assistance or accommodation of disabilities.

Either Party may request an extension of any deadline by providing the Title IX Coordinator with a written request that includes the length of the proposed extension and the basis for the request. The Title IX Coordinator will review the request and make a determination to grant or deny within three business days.

McDowell Technical Community College will take reasonable steps to protect the privacy of the Parties and witnesses during its grievance procedures. These steps will not restrict the ability of the Parties to obtain and present evidence, including by speaking to witnesses; consult with their family members, Confidential Employees, or advisors; or otherwise prepare for or participate in the grievance procedures. The Parties cannot engage in Retaliation, including against witnesses.

Evidentiary Issues

McDowell Technical Community College will objectively evaluate all evidence that is Relevant and not otherwise impermissible—including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.

The following types of evidence, and questions seeking that evidence, are impermissible (i.e., will not be accessed or considered, except by McDowell Technical Community College to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are Relevant:

- Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a Confidential Employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- A Party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or witness, unless McDowell Technical Community College obtains that Party's or witness's voluntary, written consent for use in its grievance procedures; and
- Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove Consent to the alleged Sex-Based Harassment. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's Consent to the alleged Sex-Based Harassment or preclude determination that Sex-Based Harassment occurred.

Notice of Allegations

Upon initiation of McDowell Technical Community College's Title IX grievance procedures, McDowell Technical Community College will notify the Complainant, or if the Complainant is unknown, the individual who reported the conduct, and the Respondent of the following:

- McDowell Technical Community College's Title IX grievance procedures and informal resolution process
- Sufficient information available at the time to allow the Parties to respond to the allegations, including the identities of the Parties involved in the incident(s), the conduct alleged to constitute sex discrimination, and the date(s) and location(s) of the alleged incident(s);
- Retaliation is prohibited, and allegations of Retaliation in connection with a Title IX grievance process will be addressed under this document's Section IV. grievance procedures; and
- The Parties are entitled to an equal opportunity to access the Relevant and not otherwise impermissible evidence or an accurate description of this evidence. If McDowell Technical Community College provides a description of the evidence, the Parties are entitled to an equal opportunity to access the Relevant and not otherwise impermissible evidence upon the request of any Party.

If, in the course of an investigation, McDowell Technical Community College decides to investigate additional allegations of sex discrimination by the Respondent toward the Complainant that are not included in the notice provided or that are included in a Complaint that is consolidated, McDowell Technical Community College will notify the Parties of the additional allegations.

Complaint Dismissal

McDowell Technical Community College may dismiss a Complaint of sex discrimination if:

- McDowell Technical Community College is unable to identify the Respondent after taking reasonable steps to do so;
- The Respondent is not participating in McDowell Technical Community College's Education Program or Activity and is not employed by McDowell Technical Community College;
- The Complainant voluntarily withdraws any or all of the allegations in the Complaint, the Title IX Coordinator declines to initiate a Complaint, and McDowell Technical Community College determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the Complaint, if any, would not constitute sex discrimination under Title IX even if proven; or
- McDowell Technical Community College determines the conduct alleged in the Complaint, even if proven, would not constitute sex discrimination under Title IX. Before dismissing the Complaint, McDowell Technical Community College will make reasonable efforts to clarify the allegations with the Complainant.
- Upon dismissal, McDowell Technical Community College will promptly notify the Complainant of the basis for the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then McDowell Technical Community College will also notify the Respondent of the dismissal and the basis for the dismissal promptly following notification to the Complainant, or simultaneously if notification is in writing. McDowell Technical Community College will provide the Complainant with an opportunity to appeal the dismissal of a Complaint. And, if the dismissal occurs after the Respondent has been notified of the allegations, then McDowell Technical Community College will also notify the Respondent that the dismissal may be appealed. Dismissals may be appealed on the following bases:
 - Procedural irregularity that would change the outcome;
 - New evidence that would change the outcome and that was not reasonably available when the dismissal was made; and/or
 - The Title IX Coordinator 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.

When a Complaint is dismissed, McDowell Technical Community College will, at a minimum:

- Offer Supportive Measures to the Complainant as appropriate;
- If the Respondent has been notified of the allegations, offer Supportive Measures to the Respondent as appropriate; and

- Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not continue or recur within McDowell Technical Community College Education Program or Activity.

Investigation Parameters

McDowell Technical Community College will provide for adequate, reliable, and impartial investigation of Complaints.

The burden is on McDowell Technical Community College—not on the Parties—to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.

McDowell Technical Community College will provide an equal opportunity for the Parties to present fact witnesses and other inculpatory and exculpatory evidence that are Relevant and not otherwise impermissible.

McDowell Technical Community College will review all evidence gathered through the investigation and determine what evidence is Relevant and what evidence is impermissible regardless of relevance.

McDowell Technical Community College will provide each Party with an equal opportunity to access the evidence that is Relevant to the allegations of sex discrimination and not otherwise impermissible.

McDowell Technical Community College will provide each Party a reasonable opportunity to respond to the evidence; and

McDowell Technical Community College will take reasonable steps to prevent and address the Parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the Complaint of sex discrimination are authorized.

Appointment of the Investigator/Decision maker and Challenging of the Same

Unless a Complaint is dismissed or the Parties elect to participate in informal resolution, the Title IX Coordinator will promptly appoint an investigator, who may be the Title IX Coordinator, and who will also serve as the decision maker, as expressly permitted by Title IX. The investigator/decision maker may be a McDowell Technical Community College employee or a non-employee contractor.

The Title IX Coordinator will contemporaneously share the investigator/decision maker name with the Complainant and/or Respondent. Within two business days of that notification the Complainant or the Respondent may identify to the Title IX Coordinator in writing any alleged conflicts of interest or bias on the part of the assigned investigator/decision maker.

The Title IX Coordinator will consider such statements and will promptly assign a different investigator/decision maker if the Title IX Coordinator determines that a material conflict of interest or material bias exists.

If the Title IX Coordinator is the designated investigator/decision maker, McDowell Technical Community College's Title IX Coordinator will consider any alleged conflicts of interest or bias submitted by the Parties pursuant to the previous paragraph and, if the Title IX Coordinator determines that a material conflict of interest or material bias exists, will appoint a new investigator/decision maker.

The Investigator/Decision maker's Activities, Including Questioning of Parties and Witnesses

The investigator/decision maker will take steps such as interviewing the Complainant, the Respondent, and witnesses (including expert witnesses, where applicable); recording, transcribing, and/or summarizing such interviews in writing; collecting and reviewing relevant documents; visiting, inspecting, and taking or reviewing photographs of Relevant sites; and collecting and reviewing other Relevant and not impermissible evidence.

The investigator/decision maker will question the Parties and witnesses in individual meetings to gather evidence and also to assess credibility to the extent credibility is both in dispute and Relevant to one or more allegations of sex discrimination.

Evidence Review

The investigator/decision maker will compile all Relevant and not inadmissible evidence (including items such as the Complaint, written statements of position, summaries or transcripts of all interviews conducted, photographs, descriptions of Relevant evidence, and summaries or copies of Relevant electronic records) and send to each Party an electronic or hard copy of such evidence.

The Parties then will have ten business days from the time that the evidence is provided to submit to the investigator/decision maker a written response to the evidence. In the response, the Parties may address the relevancy of any evidence that the Parties believe should be included in or excluded from the investigator/decision maker's analysis and may also address any further investigation activities or questions that they believe are necessary. If a Party wishes to submit additional evidence at this stage, they should explain how the evidence is Relevant and why it was not previously provided.

Due to the sensitive nature of the evidence in question, the Parties may not copy, publish, photograph, print, image, record, or in any other manner duplicate the evidence or any part thereof. Parties who violate these restrictions may be disciplined. Nothing in this document restricts the ability of either Party to discuss the allegations under investigation or to gather, preserve, and/or present Relevant evidence.

Determination Whether Sex Discrimination Occurred

Following an investigation and evaluation of all Relevant and not otherwise impermissible evidence, the investigator/decision maker will:

- Use the preponderance of the evidence standard of proof to determine whether sex discrimination occurred by (1) evaluating Relevant and not otherwise impermissible evidence for its persuasiveness and, (2) determining whether the evidence establishes that it is more likely than not that sex discrimination occurred. If the investigator/decision

maker is not persuaded under the applicable standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the decision maker will not determine that sex discrimination occurred.

- Notify the Parties in writing of the determination whether sex discrimination occurred under Title IX, including the rationale for such determination and the procedures and permissible bases for the Complainant and Respondent to appeal.
- Not impose discipline on a Respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the grievance procedures that the Respondent engaged in prohibited sex discrimination.
- If there is a determination that sex discrimination occurred, the Title IX Coordinator will, as appropriate:
 - o Coordinate the provision and implementation of Remedies to a Complainant and other people McDowell Technical Community College identified as having had equal access to McDowell Technical Community College's Education Program or Activity limited or denied by sex discrimination;
 - o Coordinate the imposition of any Disciplinary Sanctions on a Respondent, including notification to the Complainant of any such Disciplinary Sanctions; and
 - o Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within McDowell Technical Community College's Education Program or Activity.
- Comply with the grievance procedures before the imposition of any Disciplinary Sanctions against a Respondent; and
- Not discipline a Party, witness, or others participating in the grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred.²

Appeal of Dismissal and/or Determination

The Complainant or the Respondent may appeal Complaint dismissal and/or the investigator/decision maker's determination.

The following are the only permissible grounds for appeal: (1) procedural irregularity that affected the outcome; (2) new evidence that was not reasonably available at the time of the dismissal or determination and that could affect the outcome; and (3) the Title IX Coordinator or investigator/decision maker had a conflict of interest or bias that affected the outcome.

Appeals must be submitted in writing to the Title IX Coordinator within three business days of the Party's receipt of notification of the dismissal or determination. The Title IX

² McDowell Technical Community College may address false statements by initiating a disciplinary process under its code of conduct so long as there is evidence of such independent of the determination whether sex discrimination occurred.

Coordinator will promptly inform the other Party of the filing of the appeal, and the other Party will have three business days from such notification to submit a written response to the appeal.

Upon receipt of an appeal, the Title IX Coordinator will appoint an appeal officer, who is someone other than the person who made the dismissal or determination in question, and will notify the Parties of that appointment.

Within two business days of receiving notification of the appointment, the Complainant or the Respondent may identify to the Title IX Coordinator in writing alleged conflicts of interest or bias posed by assigning that appeal officer. The Title IX Coordinator will carefully consider such statements and will promptly assign a different appeal officer if the Title IX Coordinator determines that a material conflict of interest or material bias exists.

Within ten business days of the receipt of the appeal or the written response to such appeal, whichever is later, the appeal officer will determine (a) that the dismissal or determination should stand; or (b) that the dismissal or determination should be overturned and will issue a written explanation of that result and the rationale behind it.

Informal Resolution

In lieu of resolving a Complaint through McDowell Technical Community College's Title IX grievance procedures, the Parties may instead elect to participate voluntarily in an informal resolution process facilitated by the Title IX Coordinator or the Coordinator's designee. McDowell Technical Community College has discretion to determine whether it is appropriate to offer an informal resolution process and, even when such process may be applicable to conduct that reasonably may constitute sex discrimination under Title IX, may decline to offer informal resolution despite one or more of the Parties' wishes.

McDowell Technical Community College does not offer informal resolution to resolve a Complaint that includes allegations that an employee engaged in Sex-Based Harassment of an elementary or secondary school Student or when such a process would conflict with Federal, State, or local law.

Before the initiation of an informal resolution process, McDowell Technical Community College will explain in writing to the Parties:

- The allegations;
- The requirements of the informal resolution process;
- That any Party has the right to withdraw from the informal resolution process and initiate or resume grievance procedures at any time before agreeing to a resolution;
- That if the Parties agree to a resolution at the end of the informal resolution process, they cannot initiate or resume grievance procedures arising from the same allegations;
- The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the Parties;

- That measures the Parties agree to in the informal resolution process may include (but are not limited to): alcohol education classes for the Respondent; completion of online sexual harassment training; completion of an intervention program; regular meetings with an appropriate individual, unit or resource; permanent or temporary no contact order; restrictions for participation in certain activities, organizations, programs or classes; change in residential assignment or restrictions on access to certain residence halls or apartments; restriction of participation in certain events; reflection paper or written apology; counseling sessions; and/or Respondent's completion of an educational or behavioral plan; and
- The fact that any statements that the Parties make during the informal resolution process cannot be introduced in any other investigative or adjudicative proceeding, including if informal resolution is terminated and formal Complaint processing resumes under McDowell Technical Community Colleges Title IX grievance procedures.

A resolution reached pursuant to the informal resolution process is final and not subject to appeal.

Supportive Measures

The Title IX Coordinator will offer and coordinate Supportive Measures as appropriate for the Complainant and/or Respondent to restore or preserve that person's access to McDowell Technical Community College's Education Program or Activity or provide support during McDowell Technical Community College's] Title IX grievance procedures or during the informal resolution process.

Supportive Measures will vary depending on specific circumstances and may include but are not limited to: counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of the campus; restrictions on contact applied to one or more Parties; leaves of absence; changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex discrimination.

Supportive Measures will not unreasonably burden either Party and are designed to protect the safety of the Parties or McDowell Technical Community College's educational environment and/or to provide support during Title IX grievance procedures or informal resolution. Such measures may, as appropriate, be modified or terminated at the conclusion of the grievance procedures or informal resolution process.

Complainants or Respondents may seek modification or reversal of Supportive Measures applicable to them by submitting a written request—within three business days of notification of the measure(s) in question—to the Title IX Coordinator, who will assign an impartial McDowell Technical Community College employee to evaluate and respond to the request.

McDowell Technical Community College will not disclose information about any Supportive Measures to persons other than the person to whom they apply, including informing one Party of Supportive Measures provided to another Party, unless necessary to provide the supportive measure or restore or preserve a Party's access to the Education Program or Activity.

If any Party has a disability, the Title IX Coordinator may consult, as appropriate, with McDowell Technical Community College's Office of Disability Services in the implementation of Supportive Measures.

Emergency Removal

McDowell Technical Community College may remove a Respondent from its Education Program or Activity on an emergency basis, provided that McDowell Technical Community College undertakes an individualized safety and risk analysis; determines that an imminent and serious threat to the health or safety of a Complainant or any Students, employees, or other persons arising from the allegations of sex discrimination justifies removal; provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal; and does so in accordance with the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act, as applicable.

Administrative Leave

McDowell Technical Community College may place an employee Respondent on administrative leave from employment responsibilities during the pendency of the grievance procedures, provided that it does so in accordance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act.

Disciplinary Sanctions and Remedies

Following a determination that sex discrimination occurred, McDowell Technical Community College may impose Disciplinary Sanctions. Sanctions depend upon the nature and gravity of the misconduct, any record of prior discipline, or both. Sanctions for employees may include, but are not limited to, withholding a promotion or pay increase, reassigning employment, terminating employment, temporary suspension without pay, and compensation adjustments.

Sanctions for Students may include, but are not limited to, expulsion or suspension, disciplinary probation, social restrictions, expulsion or suspension from campus housing, suspension or revocation of admission, suspension or revocation of degree, written warning, mandated counseling, completion of an intervention program, completion of violence risk assessment, parental notification, and/or education sanctions (such as community service, reflection paper(s), and/or fines).

McDowell Technical Community College may also provide Remedies to the Complainant and others affected by the sex discrimination in question. Those Remedies will vary depending on specific circumstances and may include, but are not limited to: counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of the campus; restrictions on contact applied to one or more Parties; leaves of absence; changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs.