



Policy Number and Title:	500.201 Title IX Policy		
Approval Authority:	BMCC President	Date Effective:	08/01/2024
Responsible Office:	BMCC Title IX Office	Responsible Office Contact:	Title IX Officer

1. POLICY STATEMENT/REASON FOR POLICY

This policy has been adopted to comply with the revised Title IX laws and regulations. This policy governs Bay Mills Community College's (BMCC) responses to complaints of Title IX defined Sexual Discrimination and/or Harassment in accordance with the US Department of Education regulations (34 C.F.R. Sec. 106 et seq.).

2. ENTITIES AFFECTED BY THIS POLICY

All BMCC employees, students, Board of Regents, applicants, independent contractors, vendors, volunteers, visitors and community members accessing services.

3. WHO SHOULD READ THIS POLICY

All BMCC employees, students, Board of Regents, applicants, independent contractors, vendors, volunteers, visitors and community members accessing services.

4. WEB SITE ADDRESS FOR THIS POLICY

-This policy can be found at:

<http://www.BMCC.edu/about-BMCC/governance-administration/college-policies>

5. FORMS/INSTRUCTIONS

No forms required.

6. HISTORY

-Amended: 08/01/2024 in accordance with CFR Regulation changes;
Interim approval by the BMCC President on 08/01/2024.

-Amended: 08/14/2020; Interim Approval by the BMCC President on
08/14/2020; Approved by the BMCC Board of Regents on 08/18/2020

-Next Review Date: 08/14/2026 or sooner.

-BMCC reserves the right to revise its policies at any time.

7. THE POLICY



BAY MILLS
Community College

**BAY MILLS COMMUNITY COLLEGE
TITLE IX POLICY
EFFECTIVE AUGUST 1, 2024**

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This policy addresses incidents of sex discrimination and sex-based discrimination as defined below and is effective on August 1, 2024. Conduct that occurred on or after August 1, 2024, that may be a violation of this policy, will be addressed by this policy.

The 2020 Title IX Policy will be utilized for all alleged incidents of sex-based discrimination occurring before August 1, 2024.

I. INTRODUCTION: NOTICE OF NON-DISCRIMINATION

- A. NOTICE OF NON-DISCRIMINATION:** The Bay Mills Community College (BMCC) and its Board of Regents is committed to providing a non-discriminatory and harassment-free educational and working environment for all of its members, including employees, students, Board of Regents, applicants, independent contractors, vendors, volunteers, visitors and community members accessing services. It is the policy of Bay Mills Community College that no person shall be discriminated against, excluded from participation in, denied the benefits of or otherwise be subjected to discrimination, including harassment, in employment, in admissions, in education, or in any program or activity for which BMCC is responsible, on the basis of race, color, national origin, ancestry, sex, sexual orientation, sex stereotypes, sex characteristics, sexual orientation, gender, gender identity, pregnancy or related conditions, disability, age, religion, medical condition, veteran status, parental, family or marital status, or any other characteristic protected by institutional policy or tribal or federal law.
- B.** BMCC, as a recipient of federal funds, is required to comply with Title IX of the Higher Education Amendments of 1972, 20 U.S.C. §1681 et seq. ("Title IX"), which prohibits discrimination on the basis of sex in educational programs or activities. BMCC does not discriminate on the basis of sex or gender in its educational programs or activities, including in the context of admissions and employment.
- C.** BMCC has appointed a Title IX Coordinator who will address all complaints pertaining to discrimination of any sort. All discrimination reports (including sexual based) should be made directly to the BMCC Title IX Coordinator listed below:
- Holly Powless
Bay Mills Community College
Room 256-Michael C. Parish Administration Building
12214 W. Lakeshore Drive
Brimley, MI 49715
(906) 248-8430 hpowless@bmcc.edu
- D. Title IX Coordinator Roles and Responsibilities.** BMCC's Title IX Coordinator is the official designated by BMCC to ensure compliance with this policy on behalf of BMCC. This includes ensuring compliance with Title IX and BMCC's Title IX program, as well as all other applicable laws, rules and regulations. The Title IX Coordinator maintains the primary responsibility for ensuring appropriate education and training, and for coordinating BMCC's efforts related to the intake, investigation, resolution and implementation of supportive measures to stop, remediate and prevent sex discrimination, including sex-based harassment and retaliation prohibited under this policy.
- E. Delegation of Duties.** The Title IX Coordinator may designate other BMCC employees or external professionals to fulfill any obligations in this policy.
- F.** BMCC encourages all BMCC employees, students, Board of Regents, applicants, independent contractors, vendors, volunteers, visitors and community members accessing services, or any other individual to report an allegation of Sex Discrimination, including Sex-Based Harassment. Any person may report sex

discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, 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) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.

- G. **Mandatory Reporting:** All BMCC employees (including student-employees), other than those deemed "confidential employees," are mandated reporters and are expected to promptly report all known details of alleged sex discrimination, sex-based harassment and/or retaliation to the Title IX Coordinator. An individual who is both a student and an employee must report conduct that reasonably may constitute Sex Discrimination or sex based harassment, when the person is informed of such conduct in their capacity as an employee.

Mandatory reporting requirements apply whenever any employee receives a disclosure of conduct that violates this policy or becomes aware of information that would lead a reasonable person to believe that prohibited discrimination, harassment, sex-based harassment and/or retaliation has occurred. Employees who have an obligation to report under this policy should still treat this information as private and only share with individuals as necessary under this policy.

Confidential Employees: Reports to individuals designated as confidential employees shall only be considered confidential when they are in a confidential relationship with the person reporting, such that they are within the scope of their licensure, professional ethics, or confidential role at the time of receiving a report. In such circumstances, such individuals will maintain confidentiality except where disclosure is required by law or court order. While confidential employees are not required to report actual or suspected sex discrimination, sex-based harassment or retaliation in a way that identifies the parties, they are required to provide complainants with the Title IX Coordinator's contact information and offer options and resources without any obligation to inform an outside agency or BMCC unless a complainant has requested that the information be shared.

- H. Individuals may also make a report to law enforcement, but it is not required in order to report to BMCC. Individuals may request assistance from the Title IX Coordinator in reporting to law enforcement.

II. SCOPE OF POLICY

- A. This policy has been adopted to comply with Title IX laws and regulations. This policy governs BMCC's responses to complaints of Title IX defined Sexual Discrimination and Sexual based Harassment in accordance with the US Department of Education regulations (34 C.F.R. Sec. 106 et seq.).
- B. This policy is managed by the Title IX Coordinator and the President of Bay Mills Community College and is reviewed annually. The Title IX Coordinator will monitor BMCC'S educational programs or activities for barriers to reporting Sex

Discrimination or Sexual based Harassment, and will take steps reasonably calculated to address such barriers.

- C. **Conduct Prohibited by this Policy.** BMCC prohibits all forms of sexual discrimination and sexual based harassment as defined by Title IX. This policy applies to all sex discrimination and sex based harassment occurring under BMCC's educational programs or activity in the United States. For purposes of this policy, conduct that occurs under BMCC's education program or activity includes but is not limited to conduct that occurs in a building owned or controlled by a student organization that is officially recognized by BMCC, and conduct that is subject to the BMCC's disciplinary authority. BMCC has an obligation to address a sex-based hostile environment under its education program or activity, even when some conduct alleged to be contributing to the hostile environment occurred outside the recipient's education program or activity or outside the United States.
- D. This policy applies to all persons associated with the Bay Mills Community College community, including all BMCC employees, students, Board of Regents, applicants, independent contractors, vendors, volunteers, visitors and community members accessing services, who are engaged in any BMCC program or activity, or who are otherwise interacting with BMCC. Any individual who is found responsible of violating this policy may face disciplinary sanctions up to and including expulsion or banishment from BMCC or termination of employment.
- E. In situations not covered by this policy, misconduct complaints that do not meet the definition of Title IX Sexual Discrimination or sex based harassment under this policy, may be subject to other College policies, including but not limited to: the 400.400 Student Handbook provisions; the 300.808 BMCC Personnel Manual provisions; and, the 500.105 Code of Conduct for Visitors, Volunteers, and Guests.
- F. A Complainant is encouraged to report misconduct regardless of where the incident occurred, or who committed it. Even if BMCC does not have jurisdiction over the Respondent, BMCC will nonetheless take prompt action to provide for the safety and well-being of the Complainant and the broader campus community under this and other college policies.
- G. When BMCC has Adequate Notice of conduct that may reasonably constitute Sex Discrimination or sex based harassment, it will act to promptly, equitably, and effectively to end any Sex Discrimination or sex based harassment, in its educational programs or activities, prevent its recurrence, and remedy its effects.

III. DEFINITIONS

For purposes of this policy, the following definitions shall apply:

- A. **"Adequate Notice"** means BMCC's duty to act is activated when it receives Adequate Notice of conduct that may be a violation of this policy. BMCC has Adequate Notice when an Employee has information about conduct that reasonably may constitute Sex Discrimination or sex based harassment. All employees are required to report conduct that may constitute sexual discrimination or sex based harassment to BMCC's Title IX Coordinator.
- B. **"Advisor"** means both the Complainant and Respondent may have an Advisor

of their choosing support them through the Title IX process. BMCC will provide a party with access to a trained Advisor should they request one. An Advisor may, but need not be, an attorney.

- C. **“Appeal Decision Maker”** means an individual assigned by the Title IX Coordinator to determine the merits of an appeal of the Title IX Coordinator’s dismissal of a Complaint or the Decision Maker’s determination regarding responsibility.
- D. **“BMCC Title IX Designated Officials”** are personnel authorized by BMCC to receive notice of Title IX Sexual Harassment, and to institute corrective measures.
- E. **“College Authorities”** are designated BMCC Administrative personnel who are authorized by the BMCC Board of Regents to institute corrective measures, responsive actions, and disciplinary sanctions.
- F. **“Complainant”** means (1) a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination, sex based harassment, or retaliation under Title IX; or (2) a person, other than a student or employee, who is alleged to have been subjected to conduct that could constitute sex discrimination, sex based harassment, or retaliation under Title IX and who was participating or attempting to participate in the recipient’s education program or activity at the time of the alleged sex discrimination, sex based harassment, or retaliation.
- G. **“Complaint”** means an oral or written request to BMCC that can objectively be understood as a request for BMCC to investigate and make a determination about alleged sexual discrimination or sex based harassment under this policy.
- H. **“Confidential employee”** means a BMCC employee whose communications are privileged or confidential under Federal or State law or professional ethics. The employee’s confidential status, for purposes of this part, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies.

A BMCC employee whom BMCC has designated as confidential for the purpose of providing services to persons related to sex discrimination. If the employee also has a duty not associated with providing those services, the employee’s confidential status is only with respect to information received about sex discrimination in connection with providing those services. A confidential employee is exempt from mandatory reporting requirements when functioning within the scope of their duties to which privilege or confidentiality applies.
- I. **“Department”** means the Department of Education.
- J. **“Disciplinary sanctions”** means consequences imposed on a respondent following a determination under Title IX that the respondent violated the recipient’s prohibition on sex discrimination or sex based harassment.
- K. **“Decision Maker”** means an individual assigned by the Title IX Coordinator who

oversees a hearing which takes place as part of the formal resolution process and who determines whether College policy has been violated.

- L. “Education Program or Activity”** includes locations, events, or circumstances over which BMCC exercises substantial control over both the Respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by BMCC.
- M. “Investigator”** means an individual assigned by the Title IX Coordinator to investigate the reported Sex Discrimination or sex based harassment and oversee the investigative hearing.
- N. No-Contact Directive:** A no-contact directive, also referred to as Administrative No Contact Order (ANCO), is a document issued by a BMCC administrator that is designed to limit or prohibit contact or communications between the parties. A no-contact directive may be mutual or unilateral, with the exception that a no-contact directive issued as a sanction shall be unilateral, directing that the respondent not contact the complainant.
- O. Notice:** All notices under this policy are written and sent to the student or employee’s assigned BMCC email address or delivered via U.S. mail to the local or permanent address(es) of the parties as indicated in official BMCC records, or personally delivered to the intended recipient.
- P. “Parental status”** means the status of a person who, with respect to another person who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is:

A biological parent; An adoptive parent; A foster parent; A stepparent; A legal custodian or guardian; In loco parentis with respect to such a person; or actively seeking legal custody, guardianship, visitation, or adoption of such a person.

Exercise of rights by parents, guardians, or other authorized legal representatives. Nothing in Title IX or this policy may be read in derogation of any legal right of a parent, guardian, or other authorized legal representative to act on behalf of a complainant, respondent, or other person, including but not limited to making a complaint through BMCC’s grievance procedures for complaints of sex discrimination or sex based harassment,
- Q. “Party”** means a Complainant or Respondent.
- R. “Peer retaliation”** means retaliation by a student against another student.
- S. “Pregnancy or related conditions”** means:
 - (1) Pregnancy, childbirth, termination of pregnancy, or lactation; or,
 - (2) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
 - (3) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or

related medical conditions.

- T. “Recipient”** means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives such assistance, including any subunit, successor, assignee, or transferee thereof.
- U. “Relevant”** means related to the allegations of sex discrimination under investigation as part of all grievance procedures. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination or sex based harassment occurred.

BMCC 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.

Impermissible Evidence. The following types of evidence, and questions seeking that evidence, are impermissible regardless of whether they are relevant:

1. Evidence that is protected under a privilege recognized by Tribal, 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; or,
2. 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 BMCC obtains that party’s or witness’s voluntary, written consent for use in its grievance procedures; or,
3. 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 reported 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 reported sex-based harassment. The fact of prior consensual sexual conduct between the parties does not by itself demonstrate or imply the Complainant’s consent to the reported sex-based harassment or preclude determination that sex-based harassment occurred.
4. BMCC does not permit parties to present expert witness evidence including, but not limited to evidence presented from polygraphists and toxicologists.
5. Permissibility of character witnesses and related evidence must be relevant, and relevance of such evidence will depend on the facts and circumstances of a particular complaint.

6. Impermissible evidence will not be accessed or considered, except by the Investigator or Decision Maker, to determine whether one of the exceptions listed above applies; will not be disclosed; and will not otherwise be used.
- V. **“Remedies”** means appropriate measures provided to a complainant or any other person BMCC identifies as having had their equal access to their education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person’s access to BMCC’s educational program or activity after BMCC determines that sex discrimination occurred.
- W. **“Report”** is a disclosure of information by any person to the Title IX Coordinator or a BMCC Title IX Designated Official that includes allegations that may be covered by this policy.
- X. **“Respondent”** means a person who is alleged to have violated BMCC’s prohibition on sex discrimination or sex based harassment or retaliation.
- Y. **“Retaliation”** means any adverse employment or educational action taken against an individual because of the individual’s participation in a complaint or investigation of Sex Discrimination. Retaliation includes intimidation, threats, coercion, or discrimination against any person by BMCC, a student, or an employee or other person authorized by BMCC to provide aid, benefit, or service under BMCC’s educational program or activity, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy, including in an informal resolution process, in grievance procedures, and in any other actions taken by a recipient. Nothing in policy prevents BMCC from requiring an employee or other person authorized by BMCC to provide aid, benefit, or service under its educational program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing under this policy.
- Z. **Sex Discrimination** means conduct based upon sex that limits or denies an individual the opportunity to participate in, or benefit from, a BMCC educational program or activity, or otherwise adversely affects a term or condition of an individual’s education or employment. Sexual discrimination includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.
- AA. **“Sexual-based Harassment,” is a prohibited form of sex discrimination which includes:**
- (1) **“Quid pro quo harassment”** An employee, agent, or other person authorized by BMCC to provide an aid, benefit, or service under BMCC’s education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person’s participation in unwelcome sexual conduct.
- (2) **“Hostile environment harassment”** Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively

offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact- specific inquiry that includes consideration of the following:

- a. The degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;
- b. The type, frequency, and duration of the conduct;
- c. The parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
- d. The location of the conduct and the context in which the conduct occurred; and,
- e. Other sex-based harassment in BMCC's education program or activity; **or**

(3) Specific offenses of Sexual Assault, Dating Violence, Domestic Violence, or Stalking as defined below.

- a. **"Sexual assault"** means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation and includes any sexual act, including Rape, Sodomy, Sexual Assault with an Object; or Fondling directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent; also, unlawful sexual intercourse.
- b. **"Dating violence"** means violence committed by a person:
 - i. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
 - ii. Where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship.
- c. **"Domestic violence"** means felony or misdemeanor crimes committed by a person who:
 - i. Is a current or former spouse or intimate partner of the Complainant under the family or domestic violence laws of the jurisdiction of BMCC, or a person similarly situated to a spouse of the Complainant, or,
 - ii. Is cohabitating, or has cohabitated, with the Complainant as a spouse or intimate partner; or,
 - iii. Shares a child in common with the Complainant; or,
 - iv. Commits acts against a youth or adult Complainant who is protected from those acts under the family or domestic violence laws of the jurisdiction.

d. **“Stalking”** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person’s safety or the safety of others; or suffer substantial emotional distress.

(4) **“Consent”** as applied to the definition of sex-based harassment: The Assistant Secretary will not require a recipient to adopt a particular definition of consent, where that term is applicable with respect to sex-based harassment. Therefore, for this Title IX policy, consent means consent is willingly and verbally agreeing to specific sexual contact or conduct. Individuals who consent to sex must be able to understand what they are doing and do so willingly. Consent may be withdrawn at any time, even during the course of sexual activity. A person may not be able to give consent if: they are under the age of 16; if they are legally mentally incapable; or mentally or physically incapacitated.

No individual who has been forced or coerced into sexual activity can consent. Force is the use or threatened use of physical force or violence against a person. Coercion is unreasonable pressure for sexual activity, including continued pressure for sexual activity once an individual communicates disapproval for that activity, non-physical threats, or implied threats. Factors to be considered include, but are not limited to, the intensity and duration of the conduct.

No individual who is incapacitated by alcohol, other drugs, prescribed medication, mental disability, sleep, or involuntary physical restraint can consent. Incapacitation is a state when an individual cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why, or how” of the sexual interaction). Engaging in sexual activity with an individual who one knows or reasonably should know to be incapacitated is a violation of this policy.

Where alcohol or other drugs are involved, incapacitation is a state beyond intoxication. Evaluating the absence of consent due to incapacitation requires an assessment of whether a Respondent knew or should have known of the Complainant’s incapacitation from the perspective of a sober, reasonable person in the Respondent’s position.

BB. Student means a person who has gained admission to BMCC.

CC. Student with a disability means a student who is an individual with a disability as defined in the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(9)(B), (20)(B), or a child with a disability as defined in the Individuals with Disabilities Education Act, 20 U.S.C. 1401(3).

DD. Supportive Measures means individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent to:

Restore or preserve that party’s access to the recipient’s education program or

activity, including measures that are designed to protect the safety of the parties or the recipient's educational environment; or Provide support during the recipient's grievance procedures, or during the informal resolution process.

EE. "Title IX" means Title IX of the Education Amendments of 1972 (Pub. L. 92–318; 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688, 1689), as amended.

FF. "Title IX Coordinator" means a designated BMCC official with primary responsibility for coordinating BMCC's compliance with Title IX. This individual provides leadership for Title IX activities; coordinates consultation, education, and training; and helps to ensure that BMCC responds appropriately, effectively, and equitably to all Title IX issues. Any reference to the Title IX Coordinator in this policy may also include a designee of the Title IX Coordinator to fulfill their role.

IV. PROCEDURES RELATING TO COMPLAINTS OF SEX DISCRIMINATION, SEX BASED HARASSMENT AND RETALIATION

The procedures set forth below apply to all complaints or reports of sex discrimination including sex-based harassment and retaliation, prohibited by BMCC's Title IX Policy.

A. PRINCIPLES APPLICABLE TO ALL PROCEDURES IN THIS POLICY

1. **Equitable Treatment.** BMCC will treat complainants and respondents equitably.
2. BMCC presumes that the respondent is not responsible for any reported sex discrimination, sex based harassment or retaliation until a determination is made at the conclusion of its grievance procedures.
3. BMCC requires that any Title IX Coordinator, investigator or decisionmaker not have a conflict of interest or bias for or against the complainants or respondents generally or an individual complainant or respondent. In some cases, a decisionmaker may be the Title IX Coordinator or investigator.
4. BMCC will establish reasonably prompt timeframes for the major stages of the grievance procedures and will allow for good cause extensions.
5. BMCC will objectively evaluate all relevant evidence. Credibility determinations will not be based on an individual's role in the complaint.
6. Impermissible evidence will be excluded regardless of relevance.
7. BMCC will apply consistent principals for determining which grievance procedures will apply to sex discrimination complaints
8. **Reservation of Rights.** BMCC reserves the right to take whatever measures it deems necessary in response to an allegation of sex discrimination or sex based harassment in order to protect the rights and personal safety of students, employees and other members of the campus community. Such measures include, without limitation, interim suspension from campus pending a hearing, placing an employee on paid administrative leave, and utilizing an external investigator to investigate any complaint.
9. **Privacy.** All activities under these procedures shall be conducted considering the privacy interests of those involved. While BMCC will take all reasonable steps to protect the privacy of individuals involved in a complaint, it may be necessary to disclose some information to individuals or offices on campus to address a

complaint or provide for the physical safety of an individual or the campus. Thus, BMCC cannot, and does not, guarantee that all information related to complaints will be kept confidential. Information received in connection with the reporting, investigation and resolution of any allegations under these procedures or the policies relating to these procedures will be treated as private and will only involve individuals BMCC determines are necessary: (i) to conduct an appropriate investigation; (ii) to provide assistance and resources to the parties; (iii) to perform other appropriate College functions; or (iv) when BMCC is required to provide information under the law. This includes, but is not limited to, when BMCC obtains prior written consent to the disclosure, and disclosure to authorized legal representatives on behalf of the person they represent.

BMCC will not restrict the ability of the parties to obtain and present evidence, including speaking to witnesses; consulting with their family members, confidential resources or advisors; or otherwise preparing for or participating in grievance procedures.

In addition, the Title IX Coordinator or designee must provide the BMCC President notice of any allegation of sexual misconduct involving an employee.

BMCC will also take reasonable steps to prevent and address the unauthorized disclosure of information and evidence obtained solely through these grievance procedures by parties and their advisors.

10. **Amnesty.** Parties and witnesses who participate in the grievance process and were under the influence of alcohol or other drugs during the time of the incident will not be referred to BMCC's student conduct process for alcohol or other drug violations related to their personal use of drugs or alcohol, provided that such violations did not place the health or safety of any other person at risk. BMCC may refer the parties or witnesses for educational or therapeutic remedies.
11. **Standard of Evidence:** All investigations and determinations regarding responsibility under these procedures will be conducted pursuant to a preponderance of the evidence standard.
12. **Title IX Coordinator:** The Title IX Coordinator is the official designated by BMCC to ensure compliance with its Title IX Policy on behalf of BMCC. This includes ensuring compliance with Title IX and BMCC's Title IX program, as well as all other applicable laws, rules and regulations, including relating to discrimination or harassment based upon any other protected characteristic. The Title IX Coordinator maintains the primary responsibility for ensuring appropriate education and training, and for coordinating BMCC's efforts related to the intake, investigation, resolution and implementation of supportive measures to stop, remediate and prevent sex-based discrimination, harassment and retaliation prohibited under this policy.

B. TITLE IX COORDINATOR'S REVIEW OF REPORTS AND INITIAL ASSESSMENT

1. The Title IX Coordinator reviews all reports and complaints of sex discrimination and retaliation under the Title IX Policy. The available resolution options will be guided by the availability of information or evidence suggesting that a policy violation may have occurred; BMCC's obligation to investigate and provide appropriate remedies to eliminate, prevent and address the effects of prohibited conduct; and the desire of the complainant to participate in an investigation or other resolution. Upon completion of an initial assessment, the Title IX Coordinator will determine the available options for resolution and will communicate the options to the parties.
2. Upon receiving a report or complaint of conduct that may be prohibited under the Title IX Policy, the Title IX Coordinator will provide information to the complainant on the availability of supportive measures, the right to file a complaint, and how to file a complaint. If the report came from an individual other than the complainant, the Title IX Coordinator will attempt to contact the complainant to provide this information. If the complainant chooses to file a complaint, the Title IX Coordinator will appoint an Investigator (who may be the Title IX Coordinator) to conduct an investigation.

C. FILING A COMPLAINT

1. The following people have a right to make a complaint of sex discrimination, including complaints of sex-based harassment, requesting that BMCC investigate and make a determination about reported discrimination under Title IX:

- A complainant;
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant; or
- The Title IX Coordinator.

Note that a person is entitled to make a complaint of sex-based harassment only if they themselves are reported 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.

2. The Title IX Coordinator may also file a complaint if a person entitled to file a complaint does not wish to do so. In deciding whether to file a complaint, the Title IX Coordinator will consider factors including, but not limited to:
 - The complainant's request not to proceed with initiation of a complaint;
 - The complainant's reasonable safety concerns regarding initiation of a complaint;
 - The risk that additional acts of sex discrimination would occur if a complaint is not initiated;
 - The severity of the reported 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 employee of BMCC;
 - The scope of the reported sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination reported to have impacted multiple individuals;
 - The availability of evidence to assist a decision-maker in determining whether sex discrimination occurred; and
 - Whether BMCC could end the reported sex discrimination and prevent its recurrence without initiating an investigation.
3. If, after considering the above factors and other relevant factors, the Title IX Coordinator determines that the conduct as reported presents an imminent and serious threat to the health or safety of the complainant or other person, or that the conduct as reported prevents BMCC from ensuring equal access on the basis of sex to its education program or activity, the Title IX Coordinator may initiate a complaint.
 4. If the Title IX Coordinator initiates 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.
 5. With respect to complaints of sex discrimination other than sex-based harassment, in addition to the individuals listed above, the following individuals have a right to make a complaint:
 - Any BMCC student or employee; or
 - Any person other than a student or employee who was participating or attempting to participate in BMCC's education program or activity at the time of the alleged sex discrimination.
 6. BMCC 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.
 7. BMCC will complete its initial assessment within ten business (10) days of receipt of a complaint or report, or, on a case-by-case basis, will provide the parties with written notice of reasonable extension of the timeframe, including the reason for delay.

D. EMERGENCY REMOVAL AND ADMINISTRATIVE LEAVES

1. For matters alleging sex discrimination and sex-based harassment, BMCC retains the authority to remove a respondent from BMCC's program or activity on an emergency basis, where BMCC:
 - a. undertakes an individualized safety and risk analysis;
 - b. determines that an immediate and serious threat to the health or safety of a complainant or any student, employee, or other individual arising from the allegations of sex discrimination or sex-based harassment warrants removal; and,

- c. BMCC provides the respondent with notice of, and an opportunity to challenge, the decision immediately following the removal.
2. Upon an individualized analysis and determination that an imminent and serious threat to the health or safety of a complainant or any students, employees or other persons arising from allegations of sex discrimination justifies removal, the Title IX Coordinator may determine to remove a student respondent from BMCC's education program or activity on an emergency basis. In such cases, the respondent will promptly be provided with notice and an opportunity to challenge the removal.
3. A respondent may challenge an emergency removal decision by notifying the Title IX Coordinator in writing. BMCC will designate an impartial individual, not otherwise involved in the matter, to consider the challenge to the removal and determine if the emergency removal was warranted.
4. BMCC retains the authority and discretion to place an employee respondent on administrative leave during a pending complaint process under this policy with or without pay as appropriate, after evaluation of all circumstances. Administrative leave implemented as a supportive measure or as emergency removal is subject to the procedural provisions above, including the right to challenge the decision to implement that measure.

E. SUPPORTIVE MEASURES FOR BOTH PARTIES

1. BMCC will provide supportive measures to both the Complainant and Respondent, whether or not a Complaint is filed, to ensure equal access to BMCC's educational programs and activities, protect the safety of all parties or the educational environment, and/or deter prohibited conduct. The Title IX Coordinator will conduct an individualized assessment and will review requests from the parties to determine appropriate supportive measures. Supportive measures are non-disciplinary, non-punitive individualized services provided to a party at no cost that do not unreasonably burden another party. They are offered to individuals as appropriate and reasonably available. Supportive measures may include the following:
 - a. Referral to Counseling and support services.
 - b. Academic or course-related adjustments, such as extensions of deadlines.
 - c. Modifications of work or class schedules.
 - d. Campus escort services.
 - e. No contact restrictions between the parties.
 - f. Changes in work locations.
 - g. Leaves of absence.
 - h. Increased security and monitoring of certain areas of campus.
 - i. Assistance in making a report to law enforcement or obtaining a protective order.

2. The Title IX Coordinator, not the parties, will coordinate the provision of interim supportive measures. Parties may need to communicate with BMCC employees with a need to know regarding the supportive measures.
3. BMCC will maintain the confidentiality of any supportive measures provided to the parties to the extent that maintaining such confidentiality would not impair the ability of BMCC to provide the supportive measures.
4. Either party may challenge a decision to provide, deny, modify or terminate supportive measures that are applicable to that party. Challenges to supportive measures will be heard by an impartial employee who did not originally implement the supportive measures.
5. Application of Section 504/Americans with Disabilities Act to this Policy. BMCC adheres to the requirements of the Americans with Disabilities Act of 1990, as amended 2008 (ADAAA); Sections 504 and 508 of the Rehabilitation Act of 1973, as amended; and all other federal and state laws and regulations prohibiting discrimination on the basis of disability. BMCC is committed to providing individuals with disabilities equal access and opportunity and strives in its policies and practices to provide for the full participation of individuals with disabilities in all aspects of BMCC life. If a student or employee is an individual with a disability under Section 504 of the Rehabilitation Act or the Americans with Disabilities Act (ADA), the Title IX Coordinator may consult with Disability Support Services and/or the ADA Coordinator, as appropriate, in determining appropriate supportive measures. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any time relating to the implementation of this policy, including making a complaint or report, initiating a resolution procedure, and participating in any grievance process. Accommodations will be granted if they are appropriate and do not fundamentally alter the process. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the parties, even where the parties may be receiving accommodations in other BMCC programs and activities. With the consent of the impacted student or employee, the Title IX Coordinator will work collaboratively with the Disability Support Services and/or the ADA Coordinator, and/or Human Resources to ensure that approved reasonable accommodations (disability-related) are honored as applicable throughout any process related to this policy.
6. The BMCC Title IX office will document and maintain records that it has taken reasonable measures designed to restore or preserve equal access to BMCC's education program or activity where appropriate and will maintain records of any supportive measures taken.

F. COMPLAINT DISMISSAL

1. The Title IX Coordinator may dismiss a complaint under any of the following circumstances:
 - The complainant notifies the Title IX Coordinator that they wish to withdraw their complaint, the Title IX Coordinator declines to initiate a Complaint and

- BMCC determines that, without the complainant's withdrawn allegations, the conduct alleged in the complaint, if any, would not constitute sex discrimination even if proven;
- The respondent is no longer enrolled in classes or employed by BMCC;
 - BMCC is unable to identify the respondent after taking reasonable steps to do so; or,
 - The reported conduct would not constitute sex discrimination, if proven. Before dismissing the complaint, BMCC will make reasonable efforts to clarify the allegations with the Complainant.
2. Complaints that are dismissed may still be resolved through an informal resolution process. If BMCC dismisses the complaint for any reason, either party may appeal the decision through the appeals process. If the dismissal is appealed, BMCC will:
- Promptly notify the parties of any appeal, including notice of the allegations, if notice was not previously provided to the respondent;
 - Implement appeal procedures equally for the parties;
 - Ensure that the decision-maker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
 - Ensure that the decision-maker for the appeal has been trained consistent with the Title IX regulations;
 - Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
 - Notify the parties of the result of the appeal and the rationale for the result.
3. When a complaint is dismissed, BMCC 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 or sex based harassment does not continue, occur or recur within BMCC's education program or activity.

G. INVESTIGATION

1. Reports of sex discrimination will be resolved through an investigation and formal resolution when the reported sex discrimination, if true, would be prohibited under BMCC's Title IX Policy. In instances when BMCC determines informal resolution is inappropriate; when the complainant requests; or when BMCC requires formal investigation, BMCC will consider the concerns and rights of all parties and provide a prompt, fair, impartial, and equitable process.
2. If an eligible person under this policy elects to file a complaint, the Title IX Coordinator will provide written notice to the respondent within ten (10) business days and include:
 - Sufficient information available at the time to allow the parties to respond to the allegations, including, to the extent available, the identities of the parties

- involved in the incident(s), the conduct reported to constitute sex discrimination, and the date(s) and location(s) of the reported incident(s);
- That there is a presumption they are not responsible for a policy violation;
 - That all parties are entitled to an advisor of their choice;
 - That all parties can inspect and review evidence;
 - That false statements made in bad faith are prohibited by these procedures and could result in disciplinary action;
 - Information regarding these procedures and informal resolution processes;
 - That retaliation is prohibited; and,
 - That the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence.
3. If, in the course of an investigation, BMCC decides to investigate additional allegations of sex discrimination by the respondent toward the complainant that are not included in the initial notice or that are included in a complaint that is consolidated, BMCC will notify the parties of the additional allegations.
 4. After a complaint is filed, the Title IX Coordinator will appoint an investigator (who may be the Title IX Coordinator) to investigate the allegations.
 5. The burden is on BMCC to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.
 6. During the investigation, the investigator may interview both parties, and any relevant witnesses. The Investigator may also gather or request other relevant information or evidence when available and appropriate. Both parties will be asked to identify witnesses and provide other relevant information in a timely manner to facilitate prompt resolution of the case.
 7. Although both parties are advised to participate in the investigation process to enable a fair and equitable resolution to any case, neither party is required to participate in the investigation process.
 8. During the investigation, both parties shall have an equitable right to:
 - Receive notice of the allegations with sufficient time to prepare for meaningful participation before participating in an interview;
 - A process with reasonably prompt timeframes, with extensions for good cause, as described below;
 - Present relevant information to the investigator, including evidence and witnesses;
 - Receive timely and equal access to any relevant information, documentation, and evidence gathered during the investigation;
 - Have an advisor of their choosing who may be an attorney, advocate, or other support person who is not a potential witness in the investigation or could otherwise compromise the investigation, who provides support throughout the process, including being present for any meetings or hearings;
 - Investigators who are adequately trained to resolve cases of reported sex discrimination, are familiar with applicable policies and procedures, and who

- do not have a conflict of interest or bias for or against either party; and
 - Have written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings to all parties whose participation is invited or expected, with sufficient time for the party to prepare to participate.
9. After completing the investigation, the investigator will draft an investigative report regarding the allegations contained in the complaint.
 10. Before the report is finalized, the investigator will send to each party and their Advisors an electronic or hard copy of the report. The report will include all evidence directly related to the allegations, even if it may not be relied upon in making a determination of responsibility. The parties will then have ten (10) calendar days to provide a written response, which the investigator will consider before finalizing the investigative report. The final investigative report will be delivered to the Title IX Coordinator (if the investigation was conducted by a designee), the complainant, and the respondent within three (3) business days of its completion. BMCC will complete the investigation within sixty (60) business days of issuance of the notice of investigation or, on a case-by-case basis, will provide the parties with written notice of a reasonable extension of the timeframe, including the reason for delay.
 11. BMCC will take reasonable steps to prevent and address the parties' and their advisors' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Investigative materials and all information related to the complaint will be shared with parties and advisors with reasonable limitations to prevent unauthorized disclosure of information. Any party or advisor who has been found to have violated confidentiality related to sharing of information and evidence will be subject to disciplinary sanctions.

V. RESOLUTION OPTIONS

There are multiple ways to resolve a complaint or report of sex discrimination. Whenever possible, BMCC will use the resolution method chosen by the complainant. During the resolution of a complaint, the Title IX Coordinator will determine whether to implement reasonable supportive measures designed to assist all parties and community members in maintaining access to and participation in BMCC programs and activities.

1. INFORMAL RESOLUTION

- a. Informal resolution may be utilized in some circumstances if BMCC deems it appropriate and both parties agree. Filing a complaint is not necessary to initiate an informal resolution process. Informal resolution will not be utilized when such a process would conflict with any applicable law. The facilitator of any informal resolution may not be the investigator or decision-maker.
- b. Before the initiation of an informal resolution process, the Title IX Coordinator 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; and,
- What information BMCC will maintain and whether and how BMCC could disclose such information for use in Title IX grievance procedures if such procedures are initiated or resumed

2. INVESTIGATION AND DECISION-MAKING RESOLUTION

a. This policy includes two investigation and decision-making procedures:

1. All Prohibited Conduct matters except for sex-based harassment involving a student as a party;
2. Sex-based harassment involving a student as a party.

b. General Information

- i. This section applies to both types of investigation and decision-making procedures.
- ii. **Acceptance of Responsibility.** If a respondent accepts responsibility for all or part of the Prohibited Conduct alleged, the Title IX Coordinator or designated sanctioning officer will issue an appropriate sanction or responsive action as to those violation(s) .
- iii. **Conflict of Interest or Bias.** After a Notice of Investigation is issued to all parties, any party may object to the participation of the Title IX Coordinator or designated investigator on the grounds of a demonstrated bias or actual conflict of interest. All parties will have three (3) days from the date of the Notice of Investigation to object to the selection of the investigator or the Title IX Coordinator.
- iv. **Objections to the Title IX Coordinator** are to be made, in writing, to the President. Objections to the appointment of the investigator are to be made in writing, to the Title IX Coordinator. All objections will be considered, and changes made as appropriate. If the objection is substantiated as to either the Title IX Coordinator or the investigator, that individual shall be replaced. Any change will be communicated in writing.
- v. **Timeline.** BMCC strives to complete the investigation and decision-making process within ninety (90) days from the date of the Notice of Investigation in matters that do not include a hearing. In matters that include a hearing, BMCC strives to complete the investigation process

and hearing within 120 days of the Notice of Investigation. The timeline for any part of the resolution process may be extended for good cause by the Title IX Coordinator. All parties shall be notified, in writing, of any extension to the timeline that is granted, the reason for the extension, and the newly anticipated date of conclusion of the investigation and/or hearing. Good cause reasons for extension may include ensuring availability of witnesses and other participants and ensuring participants have sufficient time to review materials. BMCC shall not unreasonably deny a student party's request for an extension of a complaint process deadline during exam periods. The investigator and/or Title IX Coordinator may provide the parties with periodic status updates, in writing.

- c. Standard of Review.** BMCC has the duty of conducting an investigation that gathers sufficient evidence to determine whether prohibited conduct occurred. This duty does not rest with either party. The standard of proof used in the investigation and decision-making process is the preponderance of the evidence standard, which means more likely than not.
- d. Written Notice of Meetings.** BMCC will provide the parties written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time to prepare to participate.
- e. Advisors of Choice.** BMCC will provide the parties with the same opportunities to be accompanied to any meeting or proceeding by an Advisor of their choice, who may be, but is not required to be, an attorney, and will not limit the choice or presence of the advisor in any meeting or proceeding.

f. Evidence Gathering

- i. Interviews.** The investigator will interview all parties and relevant witnesses and gather relevant documentary evidence provided by the parties and any identified witnesses. Interviews may be conducted in person or via video conference. The investigator will ask questions related to the allegations and a party will be provided the opportunity speak to the allegations and related events. Parties may identify fact witnesses and provide evidence that is relevant to the allegations and not otherwise impermissible. This includes inculpatory evidence (that tends to show it more likely that someone committed a violation) and exculpatory evidence (that tends to show it less likely that someone committed a violation). The investigator ultimately determines whom to interview to determine the facts relevant to the complaint.

All interviews shall be recorded to the extent feasible. Individuals present will be made aware of audio and/or video recording at the interview. Any interview recordings are the sole property of BMCC. Unauthorized audio or video recording of any proceedings under this policy is prohibited.

- ii. Relevant Evidence. “Relevant” means related to the allegations of sex discrimination or sex based harassment under investigation as part of all grievance procedures. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination or sex based harassment occurred.

BMCC 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.

- iii. Impermissible Evidence. The following types of evidence, and questions seeking that evidence, are impermissible regardless of whether they are relevant:

- Evidence that is protected under a privilege recognized by Tribal, 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; or,
- 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 BMCC obtains that party’s or witness’s voluntary, written consent for use in its grievance procedures; or,
- 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 reported 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 reported sex-based harassment. The fact of prior consensual sexual conduct between the parties does not by itself demonstrate or imply the Complainant’s consent to the reported sex-based harassment or preclude determination that sex-based harassment occurred.

7. BMCC does not permit parties to present expert witness evidence including, but not limited to evidence presented from polygraphists and toxicologists.
8. Permissibility of character witnesses and related evidence must be relevant, and relevance of such evidence will depend on the facts and circumstances of a particular complaint.
9. Impermissible evidence will not be accessed or considered, except by the Investigator or Decision Maker, to determine whether one of the exceptions listed above applies; will not be disclosed; and will not otherwise be used.

- g. Appeal Procedure.** A party may appeal the dismissal of a complaint, the outcome of an investigation, and/or the outcome of a hearing. Appeals must be filed in writing to the Title IX Coordinator within ten (10) days following the issuance of the Notice of Outcome or dismissal. The Title IX Coordinator will send the appeal to the Appellate Officer assigned to conduct a written review of the appeal(s) and to make a final determination.
- i. When an appeal is filed, the other party or parties shall be notified and provided with a copy of the filed appeal within one (1) day and have five (5) days to respond to the appeal in writing. A party's decision not to submit a reply to an appeal is not evidence that the non-appealing party agreed with the appeal.
 - ii. Within three (3) days of an Appellate Officer being assigned, either party may provide written objection to the Appellate Officer on the basis of an actual bias or conflict of interest. Any objection is to be sent to the Title IX Coordinator. Should the Title IX Coordinator determine that there is an actual bias or conflict of interest, the Title IX Coordinator will appoint another Appellate Officer.
 - iii. Appeals may be filed only on the following four grounds:
 1. Procedural Error: A procedural error occurred and would change the outcome. A description of the error and its impact on the outcome of the case must be included in the written appeal; or,
 2. Disproportional Sanction: When applicable, the sanction is disproportional to the findings; or
 3. New Evidence: New evidence or information has arisen that was not available or known to the party during the investigation or hearing, that would change the outcome (Information that was known to the party during the resolution process but which they chose not to present is not considered new information. The new evidence, an explanation as to why the evidence was not previously available or known, and an explanation of its potential impact on the investigation findings must be included in the written appeal.); or
 4. Actual Conflict of Interest or Demonstrated Bias: The Title IX Coordinator, investigator, or others with a role in the process with an actual conflict of interest or demonstrated bias for or against complainants or respondents generally, or the individual complainant or respondent, that would change the outcome. Any evidence supporting the alleged conflict of interest or demonstrated bias must be included in the written appeal.
 - iv. The Appellate Officer will make a determination regarding the appeal and communicate that decision, along with a rationale for

the decision, to the Title IX Coordinator who will communicate the Appellate Officer's decision to the parties. The decision of the Appellate Officer is final.

3. INVESTIGATION AND DECISION-MAKING PROCEDURES: ALL PROHIBITED CONDUCT EXCEPT SEX-BASED HARASSMENT INVOLVING A STUDENT PARTY

- a. This procedure is for all matters of Prohibited Conduct being investigated and determined under this policy except for sex-based harassment involving a student as a party.
- b. BMCC will assign a trained investigator to conduct a thorough, reliable, and impartial investigation in a reasonably prompt timeframe. BMCC reserves the right to use internal or external advisors, investigators and decision makers.
- c. All parties have the same rights during the resolution process including the right to an advisor, to submit relevant witness names and evidence, and to review the evidence gathered by the investigator and that will be considered by the decision maker.
- d. Notice of Investigation. Prior to the start of an investigation, the parties will be provided a written Notice of Investigation communicating the initiation of an investigation. Should additional allegations be brought forward, a revised written Notice of Investigation shall be provided to all parties.
- e. Upon initiation of the investigation and decision-making process, the Title IX Coordinator will notify the parties of the following:
 1. This policy and any support-based or agreement-based resolution processes;
 2. 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);
 3. That retaliation is prohibited; and
 4. The parties are entitled to an equal opportunity to access the relevant, and not otherwise impermissible evidence, or an accurate description of the evidence.
- f. The investigator will hold individual interviews with parties and witnesses to ask relevant and not otherwise impermissible questions and follow-up questions, including questions exploring credibility, and to request of the parties the names of relevant witnesses and relevant evidence. Only the investigator and the party or witness may attend each individual interview. A party's advisor may attend these meetings, subject to the rules described in this policy. Additional attendees may be permitted at the discretion of the Title IX Coordinator, including individuals in connection with an approved disability-related accommodation. All persons present at any time during

any part of the investigation or resolution process are expected to maintain the privacy of the proceedings and not discuss or otherwise share any information learned as part of the resolution process and may be subject to disciplinary action for failure to do so.

- g. The investigator will gather from parties, witnesses, and other sources, all relevant evidence.
- h. The investigator will determine whether parties and witnesses are likely to provide relevant information about the allegations and has the sole discretion to determine which parties and witnesses to call to an interview. The investigator may conduct follow-up interviews as they deem appropriate.
- i. Review of Evidence. BMCC will provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that is relevant and not otherwise impermissible. All evidence gathered through the investigation will be reviewed to determine what evidence is relevant and what evidence is impermissible regardless of relevance.
- j. BMCC 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, in the following manner:
 - The Title IX Coordinator and/or an investigator designated by the Title IX Coordinator will create an investigative report that fairly summarizes relevant evidence.
 - The investigative report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of the relevant evidence.
 - Only relevant evidence (including both inculpatory and exculpatory – i.e., tending to prove and disprove the allegations) will be referenced in the investigative report.
 - The investigator may redact irrelevant information from the investigative report when that information is contained in documents or evidence that is/are otherwise relevant.
 - The Title IX Coordinator will provide each party with a period of ten (10) days to review the investigative report and provide a written response prior to delivering the investigative report to the decision maker.
- k. Questioning Parties and Witnesses to Aid in Evaluating Allegations and Assessing Credibility. When a party or witness's credibility is in dispute, and such dispute is relevant to evaluating one or more allegations of sex discrimination, the decision maker must have an opportunity to question any party or witness whose credibility is in dispute in a live format.
- l. The decision maker will question parties and witnesses separately to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination. This will occur during individual meetings with a party or witness.

- m. Each party shall have the opportunity to propose questions that the party wants asked of any party or witness and have those questions asked by the decision maker during one or more individual meetings, including follow-up meetings with a party or witness, subject to the appropriate procedures outlined herein regarding the decision maker's advance evaluation of all questions.
- n. The decision maker, having reviewed the investigative report and all relevant evidence, shall render a determination whether Prohibited Conduct occurred and determine what, if any, discipline is appropriate.
- o. The Title IX Coordinator shall then determine the appropriate remedy(ies) for the complainant and any impacted parties.
- p. The Title IX Coordinator shall then provide the parties with a written Notice of Outcome. The Notice of Outcome shall include:
 - A statement of, and rationale for, any disciplinary sanctions BMCC imposed on the respondent.
 - A statement as to whether remedies will be provided to the complainant.
 - For the complainant, a description of any remedies that apply to the complainant.
 - BMCC's procedures and the permitted reasons for the parties to appeal;
 - How to object to the assigned Appellate Officer on the basis of actual bias or conflict of interest.
- q. The determination regarding responsibility becomes final either on the date BMCC provides the parties with the written determination of the result of any appeal, or, if no party appeals, the date on which the appeal period expires.
- r. Determinations may be appealed in writing by either party in adherence to the Appeal Procedure.

4. INVESTIGATION AND DECISION-MAKING PROCEDURES: SEX-BASED HARASSMENT INVOLVING A STUDENT

- a. The following describes the investigation and decision making procedures for matters of sex-based harassment in which a BMCC student is either a complainant or respondent, regardless of the status of the other party.
- b. Notice of Investigation. Prior to the start of an investigation, the parties will be provided a written Notice of Investigation communicating the initiation of an investigation. Should additional allegations be brought forward, a revised written Notice of Investigation shall be provided to all parties.
- c. The Notice shall include, at a minimum:
 - i. BMCC's investigation procedures, including the applicable determination procedure that will be used in the investigation and resolution, and a link to the relevant policies;

- ii. Information about the agreement-based resolutions, with a link to the full procedures;
 - iii. 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), a description of the facts alleged to constitute Prohibited Conduct, the type of Prohibited Conduct, and the date(s) and location(s) of the alleged incident(s);
 - iv. A statement that retaliation is prohibited;
 - v. The Notice will inform the parties that the investigator will establish and communicate, in writing, the date, time, location, participants, and purpose of all meetings or proceedings allowing sufficient time for the party to prepare. These deadlines may be extended by the Title IX Coordinator for good cause, and any changes will be provided, in writing, to the parties, along with the rationale for the revised deadline(s).
 - vi. A statement that the respondent is presumed not responsible for Prohibited Conduct until a determination is made at the conclusion of the resolution process;
 - vii. A statement that the parties may have an advisor of their choice who may be, but is not required to be, an attorney;
 - viii. The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence and an investigative report that accurately summarizes this evidence;
 - ix. A statement that false statements are expressly prohibited.
- d. Individual Interviews. The investigator will hold individual interviews with parties and witnesses to ask relevant and not otherwise impermissible questions and follow-up questions, including questions exploring credibility, and to request of the parties the names of relevant witnesses and relevant evidence. Only the investigator and the party or witness may attend each individual interview. A party's advisor may attend these meetings, subject to the rules described in this policy. Additional attendees may be permitted at the discretion of the Title IX Coordinator, including individuals in connection with an approved disability-related accommodation. All persons present at any time during any part of the investigation or resolution process are expected to maintain the privacy of the proceedings and not discuss or otherwise share any information learned as part of the resolution process and may be subject to disciplinary action for failure to do so.
 - e. The investigator will gather from parties, witnesses, and other sources, all relevant evidence.
 - f. The investigator will determine whether parties and witnesses are likely to provide relevant information about the allegations and has the sole discretion to determine which parties and witnesses to call to an interview. The investigator may conduct follow-up interviews as they deem appropriate.

- g. Investigator Determination of Relevance. The investigator will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance. Character evidence that is not relevant will not be considered.
- h. Evidence Review. The investigator will prepare a written report summarizing all relevant evidence gathered and all steps taken during the investigative process. The Title IX Coordinator will provide each party with a period of ten (10) days to review the investigative report and provide a written response prior to delivering the report to the decision maker(s).
- i. The parties and their advisors of choice will also have an equal opportunity to access and review the underlying relevant and not otherwise impermissible evidence summarized in the investigative report upon the request of any party.
- j. When deemed appropriate by the investigator, the investigator shall then conduct any additional fact-gathering as may be necessary. If new, relevant evidence was submitted as part of evidence review, or is gathered during this second fact-gathering period, the new relevant evidence will be made available for review by the parties and their advisors. The parties shall have five (5) days to provide a response to the newly gathered evidence. No new evidence will be accepted as part of any response, except that the investigator shall have the discretion to accept relevant evidence that was not previously available or known to exist, and that was not previously discoverable with the exercise of reasonable diligence.
- k. The investigator will consider the parties' written responses before finalizing the investigation report.
- l. Once the investigative report is final, the report shall be provided to each party and to their advisor, if any, in a secure manner.
- m. Notice of Hearing. Following conclusion of the investigation, each party shall be provided with a Notice of Hearing, which shall include information regarding the date of the hearing, the identity of the Hearing Panel/decision maker, the process to be used at the hearing, and names of witnesses. The hearing shall be scheduled no less than ten (10) days from the date of the Notice of Hearing.
- n. Within three (3) days of receipt of the Notice of Hearing, either party may object to a Hearing Panel/decision maker on the basis of a demonstrated bias or actual conflict of interest. Any objection is to be in writing and sent to the Title IX Coordinator. Should the Title IX Coordinator determine that there is an actual bias or conflict of interest, the Title IX Coordinator shall remove the decision maker and appoint another.
- o. Hearing Procedures. The purpose of a hearing is for a decision maker to determine whether the conduct occurred as alleged, and if so, whether that conduct violates this policy. BMCC expects that all individuals who participate in the hearing process do so truthfully and that all who have a responsibility

for carrying out one or more aspects of the hearing process do so fairly and without prejudice or bias. Hearings may be conducted in person or via video conferencing. The Title IX Coordinator may determine that the hearing will continue in the absence of any party or any witness.

- p. The decision maker(s) shall have the authority to determine the relevance of evidence submitted, and of questions asked, to limit the time allotted to any phase of the hearing, and/or to limit the time allotted the full hearing. The decision maker(s) shall not draw an inference about the determination regarding responsibility based solely on a party's absence from the hearing or refusal to answer questions posed.
- q. The hearing shall be audio recorded by BMCC, and this recording will be considered the only official recording of the hearing. The recording is the property of BMCC and is available by contacting the Title IX Coordinator. The recording shall be available to the complainant, respondent, their respective advisors (for the purpose of their advising role), and appellate officer until the conclusion of the appeals process. Any other recording of the hearing is strictly prohibited.
- r. Prior to the Hearing. The parties and the decision maker(s) all have the right to call witnesses. Witnesses participating in the hearing must have information relevant to the allegations. Parties who wish to call witnesses must submit the name of the witness at least five (5) days in advance of the hearing.
- s. Only witnesses who participated in the investigation will be permitted to participate in the hearing, unless the witness was otherwise unknown or not known to have relevant information during the course of the investigation. If the witness did not participate in the investigation, the party must also provide the reason the witness was not interviewed by the investigator, and what information the witness has that is relevant to the allegations. The decision maker(s) will then determine whether the witness has relevant information and if there is sufficient justification for permitting the witness to participate. The decision maker(s) may instead send the case back to the investigator to interview the newly proffered witness prior to the hearing taking place.
- t. A list of witnesses approved by the decision maker(s) will be provided to the parties at least three (3) days prior to the hearing.
- u. Three (3) days prior to the hearing, each party shall submit to the decision maker(s) a preliminary list of questions they wish to pose to the other party, or to a witness. If the decision maker determines that any questions are not relevant or seek otherwise impermissible evidence, the decision maker shall exclude the question and explain the reason for the exclusion of the question at the hearing. The decision maker(s) must give a party an opportunity to clarify or revise any question that has been determined is unclear or harassing and, if the party sufficiently clarifies or revises a question, and the question is relevant, the question will be

asked.

- v. Parties may also submit introductory and closing statements before the hearing but are not required to do so.
- w. Advisor. Each party is entitled to be accompanied by one advisor at the hearing. The advisor's role is to help the party understand and navigate the proceedings. The advisor may not advocate for, respond for, or otherwise speak on behalf of a party during the hearing. If a party does not appear for the hearing, the advisor for that party may not participate in the hearing or submit questions to be asked on behalf of the party.
- x. Support Persons. Parties may select a support person of their choice to accompany them to any meetings, interviews, or hearings. A support person may provide emotional support during meetings. A support person cannot speak on behalf or otherwise represent a party during meetings. A party may choose to change a support person at any time or choose to proceed without one. The support person will not be included in communications from BMCC or the Title IX Office.
- y. Hearing Participation Guidelines. The decision maker shall have the authority to maintain order and decorum at the hearing, including responding to disruptive or harassing conduct, and when necessary to adjourn the hearing or exclude the disruptive person. In the event the decision maker removes an advisor, the decision maker will have the discretion to appoint another advisor for the remainder of the hearing. The decision maker also has the authority to determine whether any questions are not relevant, abusive, intimidating, or disrespectful, and will not permit such questions. The decision maker cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing.
- z. Statements, Questioning and Presentation of Evidence. During the hearing, each party will be permitted to provide an introductory statement. Following introductory statements, the decision maker(s) will call parties and witnesses for questioning. The order of questioning shall be determined by the decision maker(s). The decision maker(s) will pose questions to the parties and witnesses including questions approved to be asked that were submitted by each party prior to the hearing. Each party will then be provided an opportunity to submit written follow-up questions to the decision maker(s) to pose to the other party or witnesses. If the decision maker determines that any questions are not relevant to the allegations, or seek otherwise impermissible evidence, the decision maker shall exclude the question and explain the reason for the exclusion of the question at the hearing and offer an opportunity to the party to reframe or resubmit the question.
- aa. Only the decision maker is permitted to ask questions of parties and witnesses. Neither party may directly question the other party or witness. Advisors are not permitted to directly or indirectly question the other party or witness.

- ab. Following the questioning of parties and witnesses, each party will be permitted to provide a closing statement.
- ac. Parties may also provide an impact statement to the decision maker(s), in writing or as an audio-video recording. The decision maker(s) will read and consider impact statements if there is a finding of responsibility, and sanctions are to be imposed.
- ad. Determination and Notice of Outcome. Following a hearing, the decision maker(s), having reviewed the investigative report, information shared during the hearing, and all relevant evidence, shall render a determination whether Prohibited Conduct occurred and determine what, if any, discipline is appropriate.
- ae. When a student is found responsible for sex-based harassment, the decision maker will determine the sanction and notify the Title IX Coordinator of the sanctioning determination.
- af. When an employee is found responsible for sex-based harassment, the appropriate sanctioning officer will determine the sanction and notify the Title IX Coordinator of the sanctioning determination.
- ag. The Title IX Coordinator will provide each party, and their advisor should the party wish the advisor to receive it, a written Notice of Outcome within seven business days of the determination.
- ah. The Notice of Outcome will include:
 - A description of the sex-based harassment and other allegations, if applicable;
 - A reference to the policies and procedures used to evaluate the allegations;
 - Description of all procedural steps taken to date;
 - The decision maker's evaluation of the relevant and not otherwise impermissible evidence along with the finding of facts;
 - Determinations for each allegation, with the rationale;
 - Sanction determination, if applicable;
 - Whether remedies will be provided;
 - The procedures for an appeal.
- ai. The determination regarding responsibility becomes final either on the date that BMCC provides the parties with the written determination of the result of any appeal, or, if no party appeals, the date on which an appeal would no longer be considered timely.
- aj. Determinations may be appealed in writing by either party following the Appeal Procedure.
- ak. Failure to Complete Sanctions/Comply with Responsive Actions. All respondents are expected to comply with conduct sanctions/responsive actions/ corrective actions within the timeframe specified by BMCC. Respondents needing an extension to comply with their sanctions must

submit a written request to the Title IX Coordinator stating the reasons for needing additional time.

- al. Failure to follow through on conduct sanctions/responsive actions/corrective actions by the date specified, whether by refusal, neglect or any other reason, may result in additional sanctions/responsive actions/corrective actions. Students who fail to comply will be referred to the Student Services Office.

VI. DISCIPLINE AND OTHER REMEDIES

Following a determination that sex discrimination, including sex-based harassment, has occurred, BMCC may impose disciplinary sanctions, which may include, but are not limited to, the following for students and/or employees:

1. **Student Sanctions** may include: A verbal or written warning; Probation; Establishment of mandatory behavior conditions; Recommendations for counseling; Permanent removal or suspension from a course, extracurricular activity or other education program or activity (including regarding a leadership position within any such program or activity); Loss of access to College computers and/or network; A specific project designed to assist the student in better understanding the overall impact of the behavior; Restitution of damages/stolen property; Suspension without pay or termination from a student-employee position; Community service; Withholding degree; Suspension; and/or Expulsion.
2. **Employee Sanctions** may include: A verbal or written warning; A performance improvement plan; Recommendations for counseling; Additional training and/or educational requirements; Demotion; Removal of responsibilities or roles; Suspension; and/or Termination.
3. Additionally, regardless of whether a policy violation is determined (including where a determination does not occur due to lack of information in a report or a request by the complainant that an investigation not move forward), BMCC will take steps, whether individual or systemic, to stop the reported sex discrimination, prevent its recurrence, and remedy the discriminatory effects on the complainant and others, as appropriate. Remedial measures (i.e., remedies) may include, but are not limited to:
 - Providing training on sex discrimination;
 - Increasing security in a designated space;
 - Changing a BMCC policy or procedure; and/or
 - Conducting climate surveys or other climate checks.

VII. REASONABLE MODIFICATIONS FOR PREGNANT STUDENTS

1. Pursuant to this policy's prohibition against sex discrimination, BMCC will not discriminate against any person on the basis of pregnancy or related conditions, and further, will ensure that reasonable modifications to College policies, practices or procedures, as necessary, are made available to prevent sex discrimination and ensure equal access to BMCC's education program or

activity.

2. Upon being informed by any student (or individual with the legal right to act on behalf of the student) of the student's pregnancy or related conditions, all College employees, including confidential employees, must:
 - a. Promptly provide that student with the Title IX Coordinator's contact information; and
 - b. Inform that person that the Title IX Coordinator can coordinate specific actions, including reasonable modifications, to prevent sex discrimination and ensure equal access to BMCC's education program or activity.
3. Reasonable Modifications for Pregnant and Parenting Students:
 1. Students wishing to request reasonable modifications for pregnancy or related conditions may contact the Title IX Coordinator. BMCC's Title IX Coordinator or designee will work with the student and BMCC employees to provide reasonable modifications to policies, practices and procedures, if requested. These reasonable modifications:
 - Cannot fundamentally alter the education program or activity; and
 - May be accepted or denied by the student;
 - May include, without limitation: breaks to express breastmilk or attend to health-related needs; breaks to eat, drink or use the restroom; intermittent absences; schedule modifications; and voluntary leaves of absence with the right to be returned to the same position in an education program or activity.
 2. Any pregnant or parenting student has the right to access lactation spaces on campus. Lactation spaces are locations that are clean, shielded from view, and free from intrusion by others. Lactation spaces may not be bathrooms. A designated Lactation space is located at BMCC's main campus, and information regarding such may be obtained from BMCC's Title IX Coordinator.
 3. BMCC will not require a student to provide documentation from a healthcare provider or any other person regarding pregnancy or related conditions that the student is physically able to participate in a College education program or activity unless:
 - a. The certified level of physical ability or health is necessary for participation;
 - b. BMCC requires such certification of all students participating in the education program or activity; or,
 - c. The information obtained is not used as a basis for discrimination.

ii. Reasonable Modifications for Supporting Pregnant Employees:

1. Employees and prospective employees or applicants may request reasonable accommodations for known limitations related to pregnancy or related conditions. BMCC will provide reasonable accommodations for qualified employees for pregnancy or related conditions unless the

accommodation would impose an undue hardship. BMCC will review the requested accommodation and engage in an interactive process with the employee regarding any such request, and will not take retaliatory action against any individuals who request or receive accommodations.

2. Requests for reasonable accommodations may be made by contacting BMCC'S Human Resources Department.
3. In certain circumstances, qualified employees may also be entitled to leave under the Family and Medical Leave Act. Employees may contact BMCC's Human Resources Department for additional information.

VIII. RECORDKEEPING

BMCC will maintain all records relating to notices of and complaints regarding sex discrimination, as well as all training materials used under the Title IX Policy and/or these procedures for a period of seven (7) years.

IX. TRAINING

1. Annual Training for all Employees

All BMCC employees are required to complete annual Title IX training to understand their role and obligations as a Mandatory Reporter, BMCC's obligation to address Sex Discrimination, the scope of conduct that constitutes Sex Discrimination including Sex-Based Harassment. Training completion will be monitored by the Title IX Coordinator in collaboration with Human Resources and division/department heads. Corrective action may be taken against any employee who fails to complete annual training. Training Content for all employees must cover:

- School's obligation to address sex discrimination in its education program or activity;
- The scope of conduct that constitutes sex discrimination under Title IX, including definition of sex-based harassment; and
- All applicable notification and information requirements (notify/referral to Title IX Coordinator) of possible sex discrimination and of pregnancy or related conditions.

2. Annual Training for Title IX Team

All Investigators, Decision Makers, Informal Resolution facilitators, the Title IX Coordinator, and others responsible for implementing BMCC's grievance procedures or those who have the authority to modify or terminate supportive measures must be annually trained on topics related to their responsibilities as required under Title IX, the Clery Act, and related regulations.

a. Training Content for the "Title IX Team" must cover:

- School's obligations under 34 C.F.R. §106.45 and §106.46;
- How to serve impartially, including avoiding prejudgment of the at-issue facts, conflicts of interest, and bias;
- The meaning and application of "relevant" for questions and evidence;
- The types of impermissible evidence regardless of relevance under 34 C.F.R. §106.45 and §106.46; and,

- Content covered in training for All Employees.

b. Training Content for Informal Resolution Process Facilitators must cover:

- The rules and practices associated with the school's Informal Resolution (IR) process;
- How to serve impartially, including avoiding conflicts of interest and bias; **AND**
- Content covered in training for All Employees.

c. Training Content for the Title IX Coordinator and designees must cover:

- Specific responsibilities applicable to designation of Title IX Coordinator (34 C.F.R. Sec. §106.8(a));
- Specific actions Title IX Coordinator must coordinate to prevent discrimination and ensure equal access for pregnancy or related conditions (34 C.F.R. Sec. §106.40(b)(3));
- Title IX Coordinator responsibilities and supportive measures (34 C.F.R. Sec. §106.44(f), (g));
- BMCC's recordkeeping system and recordkeeping requirements (34 C.F.R. Sec. §106.8(f));
- Any other training necessary to coordinate the recipient's compliance with Title IX; **AND**
- Content covered in trainings for All Employees, Title IX Team, and IR Process Facilitators.