

Mohawk Valley Community College
Anti-Discrimination and Anti-Harassment Policy
(Synonymous with Non-Discrimination and Non-Harassment)

Policy Name:	2014 Anti-Discrimination and Anti-Harassment (Synonymous with Non-Discrimination and Non-Harassment)
Issued:	11.21.11
Revision Date:	Revised 12.19.16, revised title 6.25.18, revised 1.22.19, revised 10.19.20, reviewed 12.20.22
Responsible Office:	Human Resources

1. **Statement of Purpose and Applicability.** Mohawk Valley Community College is committed to fostering a diverse community of faculty, staff, and students, as well as ensuring equal educational opportunity, employment, and access to services, programs, and activities. MVCC is committed in policy, principle, and practice to maintaining an environment which is free of intolerance and illegal or discriminatory behavior towards any person in accordance with state and federal law, regulations, and executive orders.¹ The policy applies to faculty, staff, and students.

2. **Definitions.**
 - a. **“Appeal Officer”** means the officer of the College assigned to determine an appeal from a final decision.

 - b. **“Days”** refers to business days, which are defined as the standard workdays of the College, typically Monday through Friday, excluding weekends and official College holidays.

 - c. **“Discrimination”** means, but is not limited to, treating a person differently than others who are similarly situated on the basis of a protected characteristic, the adoption of a procedure or practice that has a disproportionate impact on persons with that protected characteristic, or the denial, exclusion, or limitation of any person’s ability to benefit from or participate in a College activity or program on the basis of a protected characteristic. Discrimination also includes retaliation, as defined herein.

 - d. **“Final Decisionmaker”** means the officer of the College assigned to make a final decision that a respondent is “responsible” or “not responsible” for discrimination or harassment.

¹ Including but not limited to: **(a)** at the federal level, the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Civil Rights Restoration Act of 1987/1988, the Americans with Disabilities Act (ADA) of 1990, Title IX of the Education Amendments of 1972 (Title IX), Executive Order No. 12898, Executive Order No. 13166, 34 CFR Part 100, 40 CFR Part 7, 40 CFR Part 5, 6 CFR Part 21, 43 CFR Part 17, 49 CFR Part 21, 10 CFR Part 1040, 49 CFR Part 303, and the nondiscrimination authorities identified in the FMCSA Title VI Program Assurance, which has been signed by the MVCC President; and **(b)** at the state level, Executive Law Article 15, Executive Law Article 15-A; Executive Order 6 of 2021 as it relates to continuing anti-discrimination executive orders of previous governors,

- e. **“Harassment”** means unwelcome conduct or behavior directed against a person on the basis of a protected characteristic.
 - f. **“Investigator/Conduct Officer”** means the person assigned to investigate a report of discrimination or harassment.
 - g. **“Protected Characteristic”** means race, color, national origin, ancestry, shared ancestry or ethnic characteristics, citizenship or immigration status, religion, creed, sex, age, disability, gender identity or expression, sexual orientation, pregnancy, predisposing genetic characteristics, domestic violence victim status, familial status, marital status, military status, criminal conviction, income level, or limited English proficiency.
 - h. **“Reporter”** means a person, not necessarily the victim, who reports discrimination or harassment.
 - i. **“Responsible”** means a determination, made by a preponderance of the evidence, that a respondent has committed discrimination or harassment against a victim.
 - j. **“Respondent”** means the person alleged to have committed discrimination or harassment against a victim.
 - k. **“Retaliation”** means an action taken against a person who experiences, reports, or takes part in the investigation of discrimination or harassment, such action intended to punish the victim, reporter, or participant or to deter or dissuade others from reporting/participating in the investigation of discrimination or harassment.
 - l. **“Victim”** the person who was the subject of alleged harassment or discrimination.
3. **Policy Against Discrimination and Harassment.** No person shall discriminate against or harass any other person, or retaliate against any person for opposing the same, on the basis of race, color, national origin, ancestry, shared ancestry or ethnic characteristics, citizenship or immigration status, religion, creed, sex, age, disability, gender identity or expression, sexual orientation, pregnancy, predisposing genetic characteristics, domestic violence victim status, familial status, marital status, military status, criminal conviction, income level, or limited English proficiency.
4. **First Amendment Considerations.** Nothing in this policy restricts any rights otherwise protected by the First Amendment to the United States Constitution. Certain speech concerning a protected characteristic may be considered provocative or offensive to a listener but nonetheless be protected by the First Amendment unless it becomes so severe, persistent, or pervasive that it constitutes harassment against a person or creates a hostile environment. The College, in reviewing a claim of discrimination based upon the speech of a third party, will assess the severity, persistence, and pervasiveness of such speech and, considering the totality of the circumstances, determine whether such speech is so severe, persistent, or pervasive as to constitute harassment or create a hostile environment.
5. **Title IX Policy.** A separate policy applies to complaints of sexual harassment or sex-based violence under Title IX of the Educational Amendments of 1972 or the Violence Against Women Act. A

person wishing to report sexual harassment under Title IX or sex-based violence should visit this [link](#).

6. **Reporting of Crimes.** The procedures provided in this policy address discrimination/harassment not rising to the level of a crime. To the extent that any discrimination or harassment includes conduct that may be a crime, the College will report the discrimination or harassment to the appropriate authorities and address such crimes pursuant to applicable College policy.
7. **Confidentiality.** The College will make every possible attempt to ensure confidentiality and to limit access to information about the report to those required to know, and in accordance with state and federal law.
8. **Anti-Discrimination and Anti-Harassment Procedures.**
 - a. **Reporting Discrimination.** Any person may report discrimination or harassment to the College by using this [form](#). Based on the type of discrimination or harassment, and the victim’s status (whether a student or non-student), the report will be routed to one or more of the following persons. Alternatively, a reporter may report discrimination or harassment directly to College officers—whether by email, telephone, or mail—using the contact information contained in the below hyperlinks. In addition to reporting discrimination to the College, a person may report discrimination to federal or state agencies using the contact information provided below.

	Exec. Director of Human Resources (contact here)	VP for Student Affairs Title VI coordinator (contact here)	Title IX Coordinator (contact here)	Office of Judicial Affairs & Community Standards (contact here)	ADA/504 Coordinator (contact here)	Dean of Student Life (Designated Deputy Title IX Coordinator) (contact here)	Public Safety (contact here)
Sex (including sexual harassment), gender identity or expression, sexual orientation			●			●	●
Disability					●		

Race, color, national origin, ancestry, shared ancestry or ethnic characteristics, citizenship or immigration status, religion, creed, age, pregnancy, predisposing genetic characteristics, familial status, marital status, military status, criminal conviction, income level, or limited English proficiency	●	●	●				
Reporting Discrimination to the United States Department of Education Office for Civil Rights	<p>U.S. Department of Education Office for Civil Rights 26 Federal Plaza, Suite 31-100 New York, NY 10278-9991 Telephone: (646) 428-3800 Facsimile: (646) 428-3843 Email: OCR.NewYork@ed.gov Electronic Complaint Form: http://www.ed.gov/about/offices/list/ocr/complaintintro.html</p>						
Reporting procedures provided in this policy address discrimination that does not rise to the level of a crime. to the New York State Division of Human Rights	<p>333 E. Washington Street, Room 543 Syracuse, NY 13202 Telephone: (315)428-4633 Email: InfoSyracuse@dhr.ny.gov Electronic Complaint Form: https://forms.ny.gov/s3/nysdhrcomplaint</p>						

- b. **Time Limit for Reporting Discrimination or Harassment.** A report of discrimination or harassment must be filed within 180 days of the alleged discriminatory act.
- c. **Right to Advisor.** A victim and respondent may have an advisor of their choice present at all investigational meetings with the College. Such advisor shall not ask questions, speak on the individual's behalf or otherwise participate in the investigation beyond providing advice/support to the individual.
- d. **Minor's Right to Parental/Legal Guardian Notification.** In all cases involving a minor under the age of 18 years, the College will distribute to the parent or legal guardian of such minor all notices required by this policy.
- e. **Recusal and Abstention.** Wherever an Investigator, Conduct Officer, Final Decisionmaker, or Appeal Officer is the respondent subject to a report of discrimination or harassment, or has any relationship with or interest in the matter that may impair his or her independence and judgment, such person shall recuse himself or herself and abstain from all involvement in the investigation and resolution of the report. In such cases involving an Investigator or Conduct Officer, a different Investigator or Conduct Officer shall be appointed. In such cases involving a Final Decisionmaker or Appeal Officer, the Dean of

Student Life shall take the place of the Final Decisionmaker or Appeal Officer. In cases where none of the foregoing are available to substitute, the President of the College may appoint a suitable alternate.

- f. **Referral and Initial Review of Report.** Upon receiving a report of discrimination or harassment, the College will refer the report to an Investigator or Conduct Officer. The Investigator or Conduct Officer will review the report as soon as possible. The Investigator or Conduct Officer will discuss with the reporter, the victim, and respondent the report procedures, the report itself, the possibility of informal resolution, and formal investigations as appropriate for the individual case. Reports may be investigated even if the report is verbal and the reporter and/or victim does not wish to have the case initiated, however, a report must be in writing for the formal resolution procedures to apply.
- g. **Informal Resolution.** A victim may ask or agree that a complaint be handled informally. This is an optional process and applies solely to reports of discrimination and/or harassment that do not involve any form of violence (such cases will require formal resolution). If the victim chooses an informal resolution, the below procedures will apply.
 - i. Review of Report. The Investigator or Conduct Officer will review all relevant information, interview pertinent witnesses, and bring together the victim and the respondent, if desirable and agreeable to both parties.
 - ii. Discussion with Victim and Respondent. The Investigator or Conduct Officer will advise the victim and respondent of their right to have an advisor present at all meetings and provide them with this policy. The Investigator or Conduct Officer shall provide the respondent with an oral statement of the report.
 - iii. Negotiation of Informal Resolution. The Investigator or Conduct Officer will communicate with the victim and respondent separately, or jointly if agreeable to both, to negotiate a resolution.
 - iv. Recommendation of Informal Resolution. If the parties agree to a resolution, the Investigator or Conduct Officer will recommend the resolution to either the Executive Director of Human Resources (or his or her designee) for cases involving employee respondents or to the Vice President for Student Affairs (or his or her designee) for cases involving student respondents.
 - v. Approval of Informal Resolution. The Executive Director of Human Resources (or his or her designee) for cases involving employee respondents or the Vice President for Student Affairs (or his or her designee) for cases involving student respondents will either approve or disapprove of the proposed informal resolution and communicate the same to both parties. In the event that he or she disapproves of a recommended resolution, the informal resolution procedure may be repeated, or either party may request formal resolution.
 - vi. Documentation of Informal Resolution. Once a final informal resolution is approved, it will be documented and communicated to all parties. Appeals are

not permitted with an informal process. Records of the process will be retained in accordance with College policy and procedure.

vii. **Victim's Decision Not to Proceed with Informal Resolution.** If a victim decides not to move forward with an informal complaint resolution, the victim should inform the Investigator or Conduct Officer of their decision not to proceed. This decision should be communicated in writing to ensure proper documentation. Upon receiving the notification, the Investigator or Conduct Officer will review the situation to determine whether the informal resolution process should be terminated or if further action is warranted by the College, particularly in cases where the situation may present ongoing concerns. The Investigator or Conduct Officer will meet with the victim to discuss their decision, ensuring that the victim understands their rights and the implications of choosing not to proceed. The victim will be informed that opting out of the informal resolution may lead to either the closure of the case or the possibility of initiating a formal resolution process if deemed necessary by the College. If the College determines that the informal resolution should not proceed based on the victim's wishes, the process will be discontinued, and no further informal resolution steps will be taken. However, the College may decide to initiate formal proceedings if the situation warrants such action, and the victim will be informed accordingly. The victim's decision and any related discussions, as well as the College's determination regarding the next steps, will be documented and retained in accordance with College policy and procedure. Regardless of the decision not to proceed with the informal resolution, the victim will continue to have access to support services, including counseling, academic accommodation, or other resources as appropriate.

h. **Formal Resolution.** This process will be used for any report of discrimination and/or harassment for which an informal process is not desired or available, as follows:

- i. Written Report. For formal resolution to apply, the report must be made or memorialized in writing. The report must indicate the nature of the violation, the name(s) of the persons(s) alleged to have discriminated or harassed, the name of the victim, the names of any witnesses and contact information for them (if available), an explanation of what occurred, and a statement why the reporter believes the event constituted discrimination or harassment. The report must be signed by the reporter and dated.
- ii. Distribution of Report (3 days). The Investigator/Conduct Officer shall within three days mail or email a stamped, dated copy of the written report to the reporter, the victim (if different than the reporter), and the respondent. The letter or email transmitting the report shall advise the parties of their right to have an advisor present at all meetings with the College.
- iii. Written Response (7 days). A respondent may submit to the Investigator/Conduct Officer a written response to the report of discrimination or harassment within 7 days following its distribution to him or her. The written response shall provide any denial or counter-explanation of the alleged event, the names of any

witnesses and contact information (if available), and shall include the respondent's explanation of why he or she should not be determined "responsible" for the alleged discrimination or harassment. The respondent shall sign and date the response.

- iv. Distribution of Written Response (3 days). Within three days of receipt of the written response, the Investigator or Conduct Officer shall email or mail a stamped, dated copy of the written response, if any, to all parties.
- v. Investigation and Interviews (60 days). The Investigator/Conduct Officer will investigate the report by interviewing (and re-interviewing, as necessary) the reporter and respondent, who may have an advisor present, and the victim (if different from the reporter). In some instances, the Investigator/Conduct Officer may take notes from the conversation with the reporter and ask the reporter to sign those notes after his or her review. The Investigator or Conduct Officer may interview additional members of the college community and shall have access to any files and documents necessary for investigating the report. The reporter, respondent, witnesses, supervisors and others are expected to cooperate with the investigation. Failure to do so may result in disciplinary action and/or may have adverse consequences. The investigation shall not exceed 60 calendar days, unless extenuating circumstances exist.
- vi. Hearing. At his or her discretion the Investigator/Conduct officer may, and upon request of either party the Investigator/Conduct officer shall, conduct a hearing to receive testimony from the reporter, respondent, and any witnesses (including the victim, if different than the reporter). The investigator will conduct a comprehensive investigation and present the summary of that to a hearing panel. All parties shall be entitled to have an advisor present. Both the victim and the respondent shall be entitled to submit written statements and/or other relevant material evidence and witnesses, and to provide rebuttal to the written record compiled by Investigator/Conduct Officer. The victim and respondent shall have the right to hear each other during any testimony provided at the hearing, provided that if the victim does not wish to be in the same room as the respondent, the victim may give his or her testimony by videoconferencing. The hearing includes the Reporter and Advisor, Respondent and Advisor, any witnesses determined to have provided credible evidence, the panel members, non-voting chair and the Title VI Coordinator. All live hearing procedures will be recorded via an audio recording and provided at either Party's request/expense. That recording or transcript will be made available to the requesting party. Upon completion, the transcription service will provide two copies to MVCC. MVCC will review the transcript for accuracy before release to the person who requested and paid for the transcription.
- vii. Investigator's Written Report and Recommendation (7 days). Within seven (7) days of the conclusion of the investigation, the Investigator or Conduct Officer or Hearing Chair shall send a written report of the formal investigation to the Executive Director of Human Resources (or designee) for cases involving employee respondents, or to the Vice President for Student Affairs (or designee)

for cases involving student respondents. The report shall include the written statement of the reporter, the written statement from the respondent, a summary of all material witnesses and their statements, a summary of all testimony, and a summary of all other material evidence. The written report shall state whether, by a preponderance of the evidence (more likely than not), the respondent should be determined to be “responsible” for the discrimination or harassment alleged, or “not responsible” for the alleged discrimination or harassment. If a respondent is found responsible, the recommendation will also suggest appropriate sanctions. If the respondent is an employee and is found responsible, the College will address the Investigator/Conduct Officer’s findings in accordance with College policy and procedures as well as the applicable collective bargaining agreement, if any.

- viii. Final Decision (5 days). The Executive Director of Human Resources (or designee) for cases involving employee respondents, or the Vice President for Student Affairs (or designee) for cases involving student respondents shall review the Investigator/Conduct Officer’s written report and recommendation and within five (5) days of receipt, shall issue a written final decision: (a) agreeing or disagreeing with the recommendation and sanction; (b) requesting additional information from the Investigator/Conduct Officer, (c) modifying the recommendation and/or sanction. The final decision shall plainly state whether, by a preponderance of the evidence, the respondent is “responsible” or “not responsible.” In cases of unusual volume or complexity, the Final Decisionmaker may extend the period for a final decision for up to fourteen (14) days.
- ix. Distribution of Final Decision (3 days). Within three days of the final decision, the Investigator or Conduct Officer shall distribute the final decision to the reporter, the victim (if different than the reporter), and respondent. The Investigator/Conduct Officer may, in his or her discretion, schedule meetings with the reporter and respondent to distribute the final decision.
- x. Appeals. A victim or respondent who is aggrieved by the final decision may appeal, as follows:
 - 1. Written Appeal Statement (5 days). Within five (5) days following distribution of a final decision, the aggrieved party may file with the Investigator/Conduct Officer a written appeal statement setting forth his or her reasons for believing that the final decision should be reversed. A final decision may be reversed solely on the following bases:
 - a. A procedural error was made that unfairly and materially affected the outcome of the investigation;
 - b. New information—information acquired only after the investigation concludes and which could not have been reasonably discovered prior to or during the investigation—surfaces that is relevant to the alleged violation and would have, if known, materially altered the outcome of the investigation;

- c. A clear abuse of discretion on the part of the Investigator or Conduct Officer; or
 - d. A sanction that is unreasonably severe in light of the offenses committed.
 2. Distribution of Written Appeal and Selection of Appeal Officer (3 days). The Investigator/Conduct Officer shall within three (3) days distribute the written appeal statement to the Non-Academic Appeals Committee Chairperson who initiates meeting of designated committee members to consider the request. The Non-Academic Appeals Committee Chairperson renders the committee's decision regarding the appeal request and communicates that to the appellee and to the Title VI Coordinator. The Title VI Coordinator communicates the decision on behalf of the Committee.
 3. Decision of Appeal (5 days). Within five (5) days of the deadline for the receipt of a written response, the Appeal Officer shall issue a written Decision of Appeal either: (a) affirming the final decision; (b) reversing the final decision; (c) modifying the final decision; or (d) holding in abeyance and/or remanding the final decision for further development by the Investigator/Conduct Officer. If an appeal request is granted, the Appeal Hearing Committee will be convened. Mohawk Valley Community College will ensure that members of the Appeal Hearing Committee will be free of any conflict of interest and bias, and have not served as investigator(s), Title VI Coordinator (s), or hearing decision-maker(s) in the matter under appeal. The outcome of the Appeal Committee will be provided to the Title VI Coordinator, who will provide the outcome in writing simultaneously to both parties and include the Committee's rationale for the decision.
9. **Disciplinary Action.** If the foregoing procedures result in disciplinary action against any person, it shall be taken according to Board of Trustees Policies, collective bargaining agreements, Civil Service Law, the Student Code of Conduct or College procedures as appropriate. The College reserves the right to take action against any individual who has willfully provided a statement/report that is found to be false.
10. **Access to Records.** All records are retained according to College and State guidelines. All requests for release of information contained in academic records are governed by the Family Educational Rights and Privacy Act of 1974. Please see Registrar - Family Educational Rights and Privacy Act for more information.
11. **Title VI – Background Information and Compliance Assurances.**
 - a. **Community Participation Process.** MVCC does not provide/conduct motorist licensure/motor vehicle registration-related services/activities. The Community Participation Process for State Partners as outlined by the U.S. Department of Transportation Federal Motor Carrier Safety Administration (FMCSA) is not applicable to MVCC.

- b. **FMCSA Title VI Program Assurance.** The FMCSA Title VI Program Assurance for FY 2019 has been signed by the President and is included as an attachment (Attachment A) to this document.
 - c. **Description of Federal-Aid Programs.** FMCSA's CMVOST program is intended to help address the significant local industry's need for safety training. MVCC will recruit current and former members of the United States Armed Forces, military spouses and adult military children and will operate a six-week safety-focused program to train 18 individuals as Commercial Truck Drivers, connect them to jobs, and provide them with lifetime access to job placement services for future career moves. The program will take place in the economically challenged city of Rome, NY (a city that hosts an Air Force Research Lab and is also within driving distance from NY's Fort Drum Army Base), and will recruit trainees from throughout the region to encourage participation from high-poverty areas and from rural workers.
 - d. **Notification to Beneficiaries/Participants.** MVCC has completed the Public Notice of Title VI Program Rights template and has posted the Public Notice in all publicly-accessed facilities and on the website
 - e. **Subrecipient Compliance Reports.** MVCC does not intend to sub-award any portion of FMCSA funds.
 - f. **Title VI Program Training.** Title VI Program Training will consist of a variety of government sponsored webinars for all applicable personnel directly relating to the implementation and enforcement this policy and procedure and as it directly relates to any grant funds received. MVCC will include Title VI Program training as part of the onboarding process for new employees and annual workplace violence training. MVCC will incorporate Title VI Program elements into the existing training to address the information provided by the FMCSA in its' Basic CMVOST Title VI Program PowerPoint presentation by April 30, 2019.
 - g. **Status of Corrective Actions.** MVCC has not experienced a Federally-conducted Title VI Program Compliance Review in the last five years.
12. **ADA Commitment Statement.** MVCC is committed to providing equal access to education, programs and employment opportunities for all qualified persons with disabilities through adherence to all applicable federal and state laws, regulations, and guidelines. The College will provide reasonable accommodations necessary to afford equal education, employment and access to programs. For a copy of the [formal grievance procedure & form](#), please contact the above stated individuals.
13. **Notice of Web Accessibility Complaint.** To report inaccessible online information or functionalities, please contact oar@mvcc.edu. To file a formal MVCC grievance under Section 504 or ADA, please visit [Discrimination Based on Disability Formal Grievance Procedure Form](#). If the person is unsatisfied with the resolutions that MVCC provides, he/she may contact the Office of Civil Rights with the information below:

Office for Civil Rights (OCR) – Enforcement Office
U.S. Department of Education
32 Old Slip, 26th Floor
New York, NY 10005-2500
Telephone: 646-428-3900
Fax 646-428-3842
TDD 877-521-2172
Email OCR.NewYork

Revision History

Date	Revision Description	Revisions Made by:
08.18.24	Complete rewrite of 2014 version of Anti-Discrimination Anti-Harassment policy	Andrew Dean, Assistant Oneida County Attorney; Crystal Marceau, Executive Director of HR; Anne Nolan, Director of Compliance
9.16.24 10.21.24	Policy appeared as a first reading before the Board of Trustees Adopted by the Board of Trustees	