

Mohawk Valley Community College

Grievance Procedures for Sex-Based Harassment

Complaints for Students and Employees¹

I. Effective Date and Changes to Procedure Based on Court Rulings and Legal Challenges or Changes in Law or Regulation

This Grievance Procedure applies to incidents that occur on or after August 1, 2024. Any incidents reported under this Grievance Procedure that occurred on or before July 31, 2024, will be processed through the Mohawk Valley Community College's Title IX Grievance (Sexual Violence) policy.

Should any portion of the 2024 Title IX Final Rule (89 Fed. Reg. 33474 (Apr. 29, 2024)), be stayed or held invalid by a court of law, or if the 2024 Title IX Final Rule is withdrawn or modified to not require elements of this Grievance Procedure, the Grievance Procedures in their entirety, or the invalidated elements of this Procedure, they will be deemed revoked as of the publication date of the opinion or order from the Court and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by the date of the opinion or order publication by the Court. If this Procedure is revoked in this manner, any conduct covered under this Procedure shall be investigated and adjudicated under the previous 2020 Title IX Grievance Policy and/or Title IX Grievance (Sexual Violence) policy. Mohawk Valley Community will update this Grievance Procedure as soon as practicable to reflect any court rulings or changes that invalidate parts of the Grievance Procedure, if applicable.

II. Scope of Procedure²

Sex-Based Harassment is considered discrimination on the basis of sex if it includes harassment due to actual or perceived sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and/or gender identity.

III. Jurisdiction of Procedure³

Mohawk Valley Community College's Title IX Coordinator will determine if this Grievance Procedure applies to a Complaint. This Grievance Procedure will apply when the following elements are met, in the reasonable determination of the Title IX Coordinator:

- The conduct alleged occurred on or after August 1, 2024;
- The conduct alleged occurred in the United States;

² 34 C.F.R. 106.10.

³ 34 C.F.R. 106.11.

- The conduct alleged occurred in Mohawk Valley Community College’s Education Program or Activity; and
- The conduct alleged, if true, would constitute Sex-Based Harassment as defined in this Grievance Procedure.

NOTE: Mohawk Valley Community College 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 Mohawk Valley Community College’s Education Program or Activity, or outside of the United States. Mohawk Valley Community College’s Title IX Coordinator will work with all Complainants to assess such Complaints that may fall under these criteria, and direct to appropriate College Policies and Procedures that may apply if this Grievance Procedure does not. Mohawk Valley Community College will communicate all such decisions in writing to the Complainant. Any such dismissals shall be subject to appropriate appeal rights under this Grievance Procedure as outlined in the Dismissals section.

Conduct that occurs under Mohawk Valley Community College’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 Mohawk Valley Community College, and conduct that is subject to Mohawk Valley Community College’s disciplinary authority under Mohawk Valley Community College’s Student Code of Conduct.

If all elements of jurisdiction are met, Mohawk Valley Community College will investigate the allegations according to this Grievance Procedure as appropriate, unless informal resolution is pursued or unless there are grounds for dismissal of the Complaint.

IV. Non-Discrimination in Application

The requirements and protections of this Grievance Procedure apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by applicable federal, state or local law. All requirements and protections are equitably provided to individuals regardless of such protected status(es) or status as a Complainant, Respondent, or Witness. Individuals who wish to file a Complaint about Mohawk Valley Community College’s policy or process may contact the U.S. Department of Education’s Office for Civil Rights using contact information available at <https://ocrcas.ed.gov/contact-ocr>.

V. Definitions⁴

1. **Admission** means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by Mohawk Valley Community College.

⁴ 34 C.F.R. 106.2.

2. **Consent** means a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.
3. **Complainant** means:
 - (1) a Student or employee who is alleged to have been subjected to conduct that could constitute Sex-Based Harassment as defined in this Grievance Procedure and who was participating or attempting to participate in Mohawk Valley Community College's Education Program or Activity; or
 - (2) a person other than a Student or employee who is alleged to have been subjected to conduct that could constitute Sex-Based Harassment under this Grievance Procedure and who was participating or attempting to participate in Mohawk Valley Community College's Education Program or Activity at the time of the alleged Sex-Based Harassment.
4. **Complaint** means an oral or written request to Mohawk Valley Community College that objectively can be understood as a request for Mohawk Valley Community College to investigate and make a determination about alleged Sex-Based Harassment at Mohawk Valley Community College.
5. **Confidential Employee** means:
 - (1) an employee of Mohawk Valley Community College whose communications are privileged under Federal or State law. The employee's confidential status is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies;
 - (2) an employee of Mohawk Valley Community College whom the institution has designated as confidential for the purpose of providing services to persons related to Sex-Based Harassment. 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-Based Harassment in connection with providing those services; or
 - (3) an employee of Mohawk Valley Community College who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about Sex-Based Harassment. The employee's confidential status is only with respect to information received while conducting the study.

6. ***Disciplinary Sanctions*** means consequences imposed on a Respondent following a determination under this Grievance Procedure that the Respondent violated Mohawk Valley Community College's prohibition on Sex-Based Harassment.
7. ***Education Program or Activity*** means any academic, extracurricular, research, occupational training or other Education Program or Activity operated by Mohawk Valley Community College that receives Federal financial assistance.
8. ***Party*** means Complainant or Respondent.
9. ***Peer Retaliation*** means Retaliation by a Student against another Student.
10. ***Relevant*** means related to the allegations of Sex-Based Harassment under investigation as part of this Grievance Procedure. Questions are Relevant when they seek evidence that may aid in showing whether the alleged Sex-Based Harassment occurred, and evidence is Relevant when it may aid a decisionmaker in determining whether the alleged Sex-Based Harassment occurred.
11. ***Remedies*** means measures provided, as appropriate, to a Complainant or any other person Mohawk Valley Community College identifies as having had their equal access to Mohawk Valley Community College's Education Program or Activity limited or denied by Sex-Based Harassment. These measures are provided to restore or preserve that person's access to Mohawk Valley Community College's Education Program or Activity after Mohawk Valley Community College determines that Sex-Based Harassment occurred.
12. ***Respondent*** means a person who is alleged to have violated Mohawk Valley Community College's prohibition on Sex-Based Harassment.
13. ***Retaliation*** means intimidation, threats, coercion, or discrimination by any person, by Mohawk Valley Community College, a Student, or an employee or other person authorized by Mohawk Valley Community College to provide aid, benefit, or service under Mohawk Valley Community College's Education Program or Activity, for the purpose of interfering with any right or privileged 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 Grievance Procedure including an informal resolution process.
14. ***Sex-Based Harassment*** means sexual harassment and other harassment on the basis of sex, including harassment because of gender identity, sexual orientation, sex characteristics, sex stereotypes, and/or pregnancy or related conditions, that is:

(1) ***Quid pro quo harassment.*** An employee, agent or other person authorized by Mohawk Valley Community College'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 Mohawk Valley Community College'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: (i) the degree to which the conduct affected the Complainant's ability to access Mohawk Valley Community College's Education Program or Activity; (ii) the type, frequency, and duration of the conduct; (iii) the Parties' ages, roles within Mohawk Valley Community College's Education Program or Activity, previous interactions and other factors about each Party that may be Relevant to evaluating the effects of the conduct; (iv) the location of the conduct and the context in which the conduct occurred; and (v) other Sex-Based Harassment in Mohawk Valley Community College's Education Program or Activity;

(3) ***Sexual Assault*** (as defined in the Clery Act, 20 U.S.C. 1092(f)) means any sexual act directed against another person, without the Consent of the victim, including instances where the victim is incapable of giving Consent;

(4) ***Dating Violence*** (as defined in the Violence Against Women Act (VAWA) Reauthorization of 2022 and the VAWA Amendments to the Clery Act) means any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) Where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship.

(5) ***Domestic Violence*** means any felony or misdemeanor crimes committed by a person who: (A) is a current or former partner of the victim under the family or Domestic Violence laws of New York State or a person similarly situated to a spouse of the victim; (B) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; (C) shared a child in common with the victim; or (D) commits acts against a youth or adult victim who is protected from those acts under the family or Domestic Violence laws of New York State ; or

(6) ***Stalking*** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (A) fear for the person's safety or the safety of others; or (B) suffer substantial emotional distress.

15. ***Student*** means a person who has gained Admission.

16. ***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: (1) restore or preserve that Party's access to Mohawk Valley Community College's Education Program or Activity, including measures that are designed to protect the safety of the Parties or Mohawk Valley Community College's educational environment; or (2) provide support during Mohawk Valley Community College's Grievance Procedure for Sex-Based Harassment or during the informal resolution process].

VI. NOTE: Disability Accommodations⁵

Generally

This Grievance Procedure does not alter any institutional obligations under applicable federal state, and/or local disability laws, including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973, among others. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Grievance Procedure that do not fundamentally alter the Procedure. 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 institutional programs and activities.

Requests for Reasonable Accommodations During the Title IX Grievance Procedure

If the Complainant or Respondent discloses a disability, the [Title IX Coordinator or designee] may consult, as appropriate, with the Office of Accessibility Resources to provide support to Students with disabilities to determine how to comply with applicable law including, without limitation, Section 504 of the Rehabilitation Act of 1973 in the implementation of any Supportive Measures, or any other reasonable accommodations requested during the Grievance Procedure.

VII. Basic Requirements of the Grievance Procedure⁶

Mohawk Valley Community College is required to:

- Treat Complainants and Respondents equitably;
- Ensure that any person designated by Mohawk Valley Community College as a Title IX Coordinator, investigator/facilitator, or decisionmaker does not have a conflict of interest

⁵ 34 C.F.R. 106.8(e).

⁶ 34 C.F.R. 106.45(b).

or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent;

- Presume that the Respondent is not responsible for the alleged Sex-Based Harassment until a determination is made at the conclusion of the grievance procedures for complaints of Sex-Based Harassment;
- Establish reasonably prompt timeframes for the major stages of this Grievance Procedure, including a process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the Parties that includes the reason for the delay;
- Ensure that reasonable steps to protect the privacy of the Parties and witnesses during the pendency of the Grievance Procedure are taken, provided that the steps do not restrict the abilities of the Parties to obtain and present evidence, including by speaking to witnesses (as long as such does not result in Retaliation), consult with their family members, confidential resources, or advisors, or otherwise prepare for or participate in this Grievance Procedure;
- Ensure an objective evaluation of all evidence that is Relevant and not otherwise impermissible under this procedure, including both inculpatory and exculpatory evidence, and provide that credibility determinations must not be based on a person's status as a Complainant, Respondent or Witness;
- Exclude impermissible evidence from consideration as defined in the Grievance Procedure; and
- Clearly articulate principles for how Mohawk Valley Community College will determine which policies and procedures apply if not all such Complaints are handled under this institutional Grievance Procedure.

VIII. Reporting Sex-Based Harassment to Mohawk Valley Community College

Non-Confidential Reports

Any person may report sex discrimination, including Sex-Based Harassment (whether or not the person reporting is the person alleged to be the victim of the conduct that may constitute sex discrimination or Sex-Based 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.

Contact Information for the Title IX Coordinator:

Jennifer DeWeerth
Dean of the Rome Campus; Title IX Coordinator
Mohawk Valley Community College
1101 Floyd Avenue, Office of the Dean
Plumley Complex, Rome, NY 13440
Utica Campus: Payne Hall, Room 354
Email Address: jdeweerth@mvcc.edu
Telephone Number: (315) 334-7701

*Confidential Reports*⁷

The following officials at Mohawk Valley Community College will provide privacy, but not confidentiality, upon receiving a report of conduct prohibited by Title IX:

- Title IX Coordinator or designee(s);
- Deputy Title IX Coordinator, in the absence of the Coordinator
- Department of Public Safety

The following officials at Mohawk Valley Community College may provide confidentiality:

- Licensed Mental Health Practitioners within the College's Counseling Department

IX. Supportive and Interim Measures⁸

*Providing Supportive Measures*⁹

Complainants who report allegations of Sex-Based Harassment have the right to receive Supportive Measures from Mohawk Valley Community College regardless of whether they file a Complaint. Supportive Measures are non-disciplinary and non-punitive. Supportive Measures may vary depending upon what is reasonably available at Mohawk Valley Community College.

As appropriate, Supportive Measures may include without limitation:

- Counseling services
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services, as available
- Restrictions on contact applied to one or more Parties (no contact orders)
- Changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative
- Leaves of absence
- Increased security and monitoring of certain areas of the campus
- Training and education programs related to Sex-Based Harassment

Supportive Measures must not unreasonably burden either Party and must be designed to protect the safety of the Parties or Mohawk Valley Community College's educational environment, or to

⁷ 34 C.F.R. 106.44(d).

⁸ 34 C.F.R. 106.44(g).

⁹ 34 C.F.R. 106.44(g).

provide support during Mohawk Valley Community College's Sex-Based Harassment grievance procedure under this policy or during informal resolution under this procedure.

Mohawk Valley Community College may modify or terminate Supportive Measures at the conclusion of the grievance procedure or at the conclusion of the informal resolution process or may continue them beyond that point within Mohawk Valley Community College's discretion.

Mohawk Valley Community College will not disclose information about any Supportive Measures to persons other than the person to whom they apply, including informing one Party of Supportive Measures provided to another Party, unless necessary to provide the supportive measure or restore or preserve a Party's access to Mohawk Valley Community College's education program or activity, or there is an exception that applies, such as:

- Mohawk Valley Community College has obtained prior written consent from a person with the legal right to consent to the disclosure;
- When the information is disclosed to an appropriate third Party with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue;
- To carry out the purpose of the policy when it is necessary to address conduct that reasonably may constitute Sex-Based Harassment under Title IX in Mohawk Valley Community College's education program or activity;
- As required by Federal law, federal regulations, or the terms and conditions of a federal award; or
- To the extent such disclosures are not otherwise in conflict with Title IX, when required by State or local law or when permitted under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g, or its implementing regulations, 34 CFR Part 99).

Process for Review of Supportive Measures¹⁰

Mohawk Valley Community College provides for a Complainant or Respondent to seek modification or reversal of Mohawk Valley Community College's decision to provide, deny, modify or terminate a Supportive Measure. Grounds for challenge of Supportive Measures include, but are not limited to:

- Whether a Supportive Measure is reasonably burdensome;
- Whether a Supportive Measure is reasonably available;
- Whether a Supportive Measure is being imposed for punitive or disciplinary reasons;
- Whether the Supportive Measure is being imposed without fee or charge; and

¹⁰ 34 C.F.R. 106.44(g)(4).

- Whether the Supportive Measure is effective in meeting the purposes for which it is intended, including to restore or preserve access to the Education Program or Activity, provide safety, or provide support during the Grievance Procedure.¹¹

This review will be conducted by an impartial employee of Mohawk Valley Community College, who did not make the challenged decision on the original supportive measure request. The impartial employee of Mohawk Valley Community College who makes this determination will have the authority to modify or reverse the decision if that impartial employee determines that the decision to provide, deny, modify or terminate the supportive measure was inconsistent with the procedures as outlined above for providing Supportive Measures in accordance with the Title IX regulations.

Parties are only allowed to challenge their own individual Supportive Measures. Challenges by one Party will not be heard to Supportive Measures afforded to the opposite Party, unless that supportive measure directly impacts the Party making such challenge (i.e., two-way no contact orders).

Emergency Removal¹²

Mohawk Valley Community College retains the authority to remove a Respondent from all or part of¹³ Mohawk Valley Community College's education program or activity on an emergency basis, where Mohawk Valley Community College (1) undertakes an individualized safety and risk analysis, and (2) determines that an imminent and serious threat to the health or safety of a Complainant or any Students, employees, or other persons arising from the allegations of Sex-Based Harassment justifies removal.

Mohawk Valley Community College will provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal. If Mohawk Valley Community College determines such removal is necessary, the respondent will be provided notice and an opportunity to challenge the decision immediately following the removal. The student would send their challenge to the Title IX Coordinator via email, who will provide the information to the Vice President for Learning & Academic Affairs or designee for review and decision.

The decisionmaker who hears a challenge to an emergency removal must not be involved in any decision regarding responsibility or appeal of a determination.

¹¹ 89 FR 33610.

¹² 34 C.F.R. 106.44(h).

¹³ 89 FR 33617.

Emergency removals will not be considered Relevant evidence that can be considered in reaching a determination of whether Sex-Based Harassment occurred.¹⁴

*Administrative Leave*¹⁵

Mohawk Valley Community College retains the authority to place a non-Student employee Respondent on administrative leave during the Title IX Grievance Procedures, consistent with relevant employee handbook/collective bargaining agreements etc.

Note on Student employees: when a Complainant or Respondent is both a Student and an employee of Mohawk Valley Community College, Mohawk Valley Community College must make a fact-specific inquiry to determine whether these procedures apply to that Student employee. Mohawk Valley Community College will consider if the Complainant or Respondent's primary relationship with Mohawk Valley Community College is to receive an education and whether the alleged Sex-Based Harassment occurred while the Party was performing employment-related work.¹⁶

X. The Title IX Grievance Procedure for Allegations of Sex-Based Harassment

A. Filing a Complaint¹⁷

Who can make a Complaint?

- A Complainant (as defined in Section V(3) of this policy); or
- The Title IX Coordinator.

Note on Title IX Coordinator initiated Complaints: In the absence of a Complaint or the withdrawal of any or all of the allegations in a Complaint, and in the absence or termination of an informal resolution process, the Title IX Coordinator must determine whether to initiate a Complaint of Sex-Based Harassment. This determination is fact-specific, and the Title IX Coordinator must consider:

- The Complainant's request not to proceed with the initiation of a Complaint;
- The Complainant's reasonable safety concerns regarding initiation of a Complaint;
- The risk that additional acts of Sex-Based Harassment would occur if a Complaint is not initiated;
- The severity of the alleged Sex-Based Harassment, including whether the Sex-Based Harassment, if established, would require the removal of a Respondent from campus or

¹⁴ 89 FR 33618.

¹⁵ 34 C.F.R. 106.44(i).

¹⁶ 34 C.F.R. 106.46(b).

¹⁷ 34 C.F.R. 106.45(a)(2).

imposition of another disciplinary sanction to end the Sex-Based Harassment and prevent its recurrence;

- The age and relationship of the Parties, including whether the Respondent is an employee of Mohawk Valley Community College;
- The scope of the alleged Sex-Based Harassment, including information suggesting a pattern, ongoing Sex-Based Harassment, or Sex-Based Harassment alleged to have impacted multiple individuals;
- The availability of evidence to assist a decisionmaker in determining whether Sex-Based Harassment occurred; and
- Whether Mohawk Valley Community College could end the alleged Sex-Based Harassment and prevent its recurrence without initiating these grievance procedures.

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

If the Title IX Coordinator does initiate the Complaint after making this determination, the Title IX Coordinator must 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 as listed in Section VI of these procedures.

Is there a particular format that the Complaint needs to be in?

As defined in IV(4) of these procedures, a Complaint can be an oral or written request to Mohawk Valley Community College that objectively can be understood as a request for Mohawk Valley Community College to investigate and make a determination about alleged Sex-Based Harassment at Mohawk Valley Community College.

Who can I report a Complaint to?

Any reports of Sex-Based Harassment may be made directly to the Title IX Coordinator, whose contact information is listed at the beginning of this Grievance Procedure. There are other ways in which a Party may report a Complaint.

Mohawk Valley Community College requires that any employee who is not a Confidential Employee and who either has authority to institute corrective measures on behalf of Mohawk Valley Community College or has responsibility for administrative leadership, teaching, or advising in Mohawk Valley Community College's education program or activity must notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination, including Sex-Based Harassment.

All other employees at Mohawk Valley Community College who are not Confidential Employees and are not employees as identified above are required to notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex-discrimination, including Sex-Based Harassment.

Note: If an employee has personally been subject to conduct that reasonably may constitute sex discrimination under Title IX or any institutional policy or this Grievance Procedure, these requirements do not apply to an employee reporting a personal Complaint.

What is the timeframe for Mohawk Valley Community College to evaluate if the Title IX Coordinator is initiating an investigation under this Grievance Procedure?¹⁸

The Title IX Coordinator must evaluate whether the Complaint falls under this Grievance Procedure within three business days after the Complaint is made and must assign the case to an investigator/facilitator who will issue the Notice of Allegations as soon as practicable after the Complaint is evaluated. If there are any delays or extensions, the Title IX Coordinator must appropriately notice the Parties in writing, on a case-by-case basis, with good cause and the rationale for the extension or delay.

Can I make a Complaint and request initiation of the Grievance Procedure even if I have made a complaint to law enforcement?¹⁹

Yes. Mohawk Valley Community College has an obligation to appropriately evaluate all Complaints, regardless of whether there is a concurrent Complaint before law enforcement. This process is an administrative process that is different from the criminal justice process.

B. Multi-Party Situations and Consolidation of Complaints²⁰

Mohawk Valley Community College may consolidate Complaints alleging Sex-Based Harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against the other Party, where the allegations of Sex-Based Harassment arise out of the same facts or circumstances.

Mohawk Valley Community College can consider factors when making this fact-specific determination, which include, but are not limited to:²¹

- The facts and circumstances of the particular Complaints when deciding whether to consolidate, including the toll of separate proceedings on the Parties; and
- Any risks to the fairness of the investigation or outcome.

¹⁸ 89 FR 33669.

¹⁹ 89 FR 33669.

²⁰ 34 C.F.R. 106.45(e).

²¹ 89 FR 33690.

C. Dismissal of a Complaint²²

Grounds for Dismissal

Mohawk Valley Community College may dismiss a Complaint of Sex-Based Harassment for any of the following reasons:

- Mohawk Valley Community College is unable to identify the Respondent after taking reasonable steps to do so;
- The Respondent is not participating in Mohawk Valley Community College's education program or activity and is not employed by Mohawk Valley Community College;
- The Complainant voluntarily withdraws any or all of the allegations in the Complaint, the Title IX Coordinator declines to initiate a Complaint through this Grievance Procedure, and Mohawk Valley Community College determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the Complaint, if any, would not constitute Sex-Based Harassment under Title IX or this Grievance Procedure even if proven; or
- Mohawk Valley Community College determines that the conduct alleged in the Complaint, even if proven, would not constitute Sex-Based Harassment under Title IX or these procedures. **Note:** Mohawk Valley Community College must make reasonable efforts to clarify the allegations with the Complainant before dismissing under this basis.

Notice of Dismissal

If Mohawk Valley Community College dismisses a Complaint, Mohawk Valley Community College is required to promptly notify the Complainant of the basis for dismissal.

If the dismissal of the Complaint occurs before a Notice of Allegations is issued to the Respondent, the Title IX Coordinator does not need to notice the Respondent at that time. However, if the Complainant appeals the dismissal, the Respondent will need to be noticed of the Complaint allegations and given an opportunity to respond to the dismissal.²³ If the dismissal occurs after the Respondent has been notified of the allegations, then Mohawk Valley Community College must notify the Respondent and Complainant of the dismissal and the basis for the dismissal simultaneously in writing.

Appeal rights must also be outlined in any notification of dismissal of a Complaint, as included below under *Appeal of Dismissals*.

Appeals of Dismissals

²² 34 C.F.R. 106.45(d); 34 C.F.R. 106.46(d).

²³ 89 FR 33689.

Mohawk Valley Community College must notify the Complainant that a dismissal may be appealed and provide the Complainant with an opportunity appeal the dismissal of a Complaint on the following grounds:²⁴

- ***Procedural irregularity***: procedural irregularity that affected the outcome of the matter (i.e., a failure to follow Mohawk Valley Community College's own policy to a degree that had material effect on the outcome of the matter);
- ***New evidence***: New evidence that would change the outcome and that was not reasonably available when the determination whether Sex-Based Harassment occurred, or dismissal of the Complaint was made; and
- ***Bias or Conflict of Interest***: The Title IX Coordinator, investigator/facilitator(s), or decisionmaker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome of the matter.

If the dismissal occurs after the Respondent has been notified of the allegations, then Mohawk Valley Community College must also notify the Respondent that the dismissal may be appealed on the grounds set out above.

The submission of appeal stays (or pauses) any sanctions for the pendency of an appeal.

Supportive Measures and remote learning opportunities remain available during the pendency of the appeal.

If a Party appeals, Mohawk Valley Community College will as soon as practicable notify the other Party in writing of the appeal, however the time for appeal shall be offered equitably to all Parties and shall not be extended for any Party solely because the other Party filed an appeal.

Appeals consist of an appeal form and appeal narrative. The appeal narrative may be no longer than two pages, (including attachments). Appeals should be submitted in electronic form using ARIAL or TIMES NEW ROMAN, 12-point font, and single-spaced. Appeals that do not meet these standards may be returned to the Party for correction, but the time for appeal will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards.²⁵

Appeal requests will be decided by the Non-Academic Appeals Committee, who will be free of conflict of interest and bias, and will not have served as investigator/facilitator, Title IX Coordinator, or hearing decisionmaker in the same matter. If the request is approved, alternate members (as/if available) of the Non-Academic Appeals Committee shall comprise the appeal hearing body.

²⁴ Per 106.46(i)(2), a post-secondary institution may offer an appeal to the Parties on additional grounds, so long as the procedures and additional grounds for appeal are equally available to all Parties.

Outcome of appeal will be provided in writing simultaneously to both Parties and include rationale for the decision. The determination of the Appeal Decision-making Body is final.

D. Allegations Potentially Falling Under Two Policies

If the alleged conduct, if true, includes conduct that would constitute covered sexual harassment and conduct that would not constitute covered sexual harassment, the Title IX Grievance Process will be applied to investigation and adjudication of only the allegations that constitute covered sexual harassment.

E. Notice of Allegations²⁶

Upon initiating Mohawk Valley Community College's Grievance Procedure, the Title IX Investigator/facilitator shall provide a Notice of Allegations in writing to the Parties whose identities are known. Such notice will occur as soon as practicable after Mohawk Valley Community College receives a Complaint, if there are no extenuating circumstances.

What does the Notice of Allegations Include?

The written Notice of Allegations must include:

- Mohawk Valley Community College's Grievance Procedure and Mohawk Valley Community College's Informal Resolution process;
- Sufficient information available at the time of the issuance of the Notice of Allegations to allow the Parties to respond to the allegations, which includes the identities of the Parties involved in the incident(s), the conduct alleged to constitute Sex-Based Harassment under the Grievance Procedure, and the date(s) and location(s) of the alleged incident(s), to the extent that information is available to Mohawk Valley Community College;
- A statement that retaliation is prohibited.
- A statement that the Parties are entitled to an equal opportunity to access the Relevant and not otherwise impermissible evidence;
- A statement that the Respondent is presumed not responsible for the alleged Sex-Based Harassment until a determination is made at the conclusion of Mohawk Valley Community College's Grievance Procedure and that prior to the determination, the Parties will have an opportunity to present Relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker;
- Parties may have an advisor of their choice, and that the advisor may be, but is not required to be, an attorney;
- Mohawk Valley Community College's code of conduct prohibits knowingly making false statements or knowingly submitting false information during Mohawk Valley Community College's Grievance Procedure;] and

²⁶ 34 C.F.R. 106.45(c); 34 C.F.R. 106.46(c).

What if Mohawk Valley Community College decides to investigate additional allegations of Sex-Based Harassment?

If, in the course of an investigation, Mohawk Valley Community College decides to investigate additional allegations of Sex-Based Harassment by the Respondent toward the Complainant that are not included in the original issued written Notice of Allegations, or that are included in a Complaint that is consolidated under this Grievance Procedure, Mohawk Valley Community College shall provide notice of the additional allegations to the Parties whose identities are known.

What if I have safety concerns about a Notice of Allegations being issued to a Respondent?

To the extent that Mohawk Valley Community College has reasonable concerns for the safety of any person as a result of providing a written Notice of Allegations, Mohawk Valley Community College, through the Title IX Coordinator, may reasonably delay providing the written Notice of Allegations in order to address the safety concern appropriately. Reasonable concerns must be based on individualized safety and risk analysis and not on mere speculation or stereotypes.

F. Advisor of Choice and Participation of Advisor of Choice²⁷

A Party's advisor of choice may accompany the Party to any meeting or proceeding, and that Mohawk Valley Community College cannot limit the choice of who that advisor may be or their presence for the Parties in any meeting or proceeding unless such advisor does not follow Mohawk Valley Community College's established rules of decorum and rules around participation.

Mohawk Valley Community College will provide a list of trained advisors should either Party request one.

G. Investigation²⁸

General Rules of Investigations

The Title IX Investigator/facilitator designated by the Title IX Coordinator will perform an investigation of the conduct alleged to constitute Sex-Based Harassment in a reasonably prompt timeframe, after issuing the Notice of Allegations.

Mohawk Valley Community College, and not the Parties, have the burden to conduct an investigation that gathers sufficient evidence to determine whether Sex-Based Harassment occurred under this Grievance Procedure. This burden does not rest with either Party, and either Party may decide not to share their account of what occurred or may decide not to participate in

²⁷ 34 C.F.R. 106.46(e)(2).

²⁸ 34 C.F.R. 106.45(f); 34 C.F.R. 106.46(e).

the investigation or hearing. This does not shift the burden of proof away from Mohawk Valley Community College and does not indicate responsibility.

Mohawk Valley Community College cannot access, consider, or disclose medical records without a waiver from the Party (or parent, if applicable) to whom the records belong, or of whom the records include information. Mohawk Valley Community College will provide an equal opportunity for the Parties to present witnesses, including fact and expert witnesses, and other inculpatory or exculpatory evidence, as described below.

Notice of participation

Mohawk Valley Community College will provide written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the Party to prepare to participate, if a Party is invited or expected to participate in any such meeting or proceeding.

Advisors of Choice and Participation of Advisors of Choice

Mohawk Valley Community College will provide the Parties with the same opportunities to be accompanied to any meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of the advisor for the Complainant or Respondent in any meeting or proceeding. If a Party does not have an advisor and would like one, the College will provide the names of trained individuals at the College.

The advisor of choice may accompany the parties to any meeting or hearing they are permitted to attend but may not speak for the party.

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.

The Title IX Coordinator will provide each Party and their advisors of choice with a reasonable opportunity to respond to the investigative report. Both Parties will have the opportunity to respond to the investigative report prior to the live hearing.

Mohawk Valley Community College will take reasonable steps to prevent and address the Parties' and their advisors of choice's unauthorized disclosure of information and evidence obtained solely through this Grievance Procedure. Participating individuals who engage in the unauthorized disclosure of information and evidence obtained solely through this Grievance Procedure may be subject to Mohawk Valley Community College's Student Code of Conduct and other College policies and/or procedures that may apply.

Note: Disclosures of information and evidence for purposes of administrative proceedings or litigation related to the Complaint of Sex-Based Harassment are authorized and not considered unauthorized disclosures potentially subject to other disciplinary action.

Review and Access to Relevant and Not Otherwise Impermissible Evidence

Each Party will have an equal opportunity to present fact witnesses and other inculpatory and exculpatory evidence that are Relevant and not otherwise impermissible, to the Investigator/facilitator designated by the Title IX Coordinator. The Title IX Investigator/facilitator designated by the Title IX Coordinator will review all evidence gathered through the investigation and determine what evidence is Relevant and what evidence is impermissible regardless of relevance, consistent with this Grievance Procedure.

Each Party and their advisors of choice will have an equal opportunity to review and access the evidence that is Relevant to the allegations of Sex-Based Harassment and not otherwise impermissible regardless of relevance prior to the conclusion of the investigation. The Title IX Investigator/facilitator designated by the Title IX Coordinator will provide each Party with a reasonable opportunity to respond to the evidence. Both Parties will have the opportunity to respond to the evidence prior to the live hearing. (See Procedures)

Mohawk Valley Community College will take reasonable steps to prevent and address the Parties' unauthorized disclosure of information and evidence obtained solely through this Grievance Procedure. Participating individuals who engage in the unauthorized disclosure of information and evidence obtained solely through this Grievance Procedure may be subject to Mohawk Valley Community College's Student Code of Conduct and other College policies and/or procedures that may apply.

Note: Disclosures of information and evidence for purposes of administrative proceedings or litigation related to the Complaint of Sex-Based Harassment are authorized and not considered unauthorized disclosures potentially subject to other disciplinary action.

*Relevant Evidence*²⁹

Evidence is Relevant when it is related to the allegations of Sex-Based Harassment under investigation as part of this Grievance Procedure.

Questions are Relevant when they seek evidence that may aid in showing whether the alleged Sex-Based Harassment occurred, and evidence is Relevant when it may aid a decisionmaker in determining whether the alleged Sex-Based Harassment occurred.

²⁹ 89 FR 33694: relevance determinations are made throughout an investigation. To avoid inadvertently excluding relevant evidence, an institution may need to revisit an earlier relevance determination and reconsider a witness or a piece of evidence that Mohawk Valley Community College had previously excluded.

Impermissible Evidence

The following types of evidence, and questions seeking that evidence, are excluded as impermissible (i.e., must not be accessed or considered, except by Mohawk Valley Community College to determine whether an exception applies, must not be disclosed, and must not otherwise be used) regardless of whether they are Relevant:

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

Timeframes

Mohawk Valley Community College has established timeframes for the major stages of the grievance procedures and works diligently to conclude all investigations, hearings, determinations, outcomes and appeals within 60 days. If there are any delays or extensions, the Title IX Coordinator must appropriately provide notice to the Parties in writing, as detailed below.

Extensions and Delays

- a) Mohawk Valley Community College has established the following process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the Parties that includes the reason for the delay:
 - i. Each party may request a one-time delay in the Grievance Process of up to five (5) business days for good cause (granted or denied in the sole judgment of the decision-maker provided that the requestor provides reasonable notice and the delay does not overly inconvenience other parties.

ii. A delay of up to 10 business days may be requested if a concurrent law enforcement investigation is occurring.

H. Live Hearing³⁰

General Rules for Live Hearings³¹

Mohawk Valley Community College will not issue a finding or Disciplinary Sanction arising from an allegation of Sex-Based Harassment without holding a live hearing (either through the Single Investigator/facilitator or 3-Person Hearing Panel Models) unless otherwise resolved through an informal resolution process as outlined in this Grievance Procedure.

The live hearing may be conducted with the Parties physically present in the same geographic location. Mohawk Valley Community College has the discretion to conduct the live hearing with the Parties physically present in separate locations, with technology enabling the decisionmaker and Parties to simultaneously see and hear the Party or the witness while that person is speaking. A Party may also request this option prior to the hearing.

Mohawk Valley Community College shall create an audio or audiovisual recording or transcript of any live hearing and make it available to the Parties for inspection and review as noted below.

At its discretion, Mohawk Valley Community College may delay or adjourn a hearing based on technological errors not within a party's control.

All proceedings will be recorded through audio recording. That recording or transcript will be made available to the parties for inspection and review upon request and at the student's expense (see Procedures).

Participants in the Live Hearing

Live hearings are not public, and the only individuals permitted to participate in the hearing are as follows:

Complainant and Respondent (The Parties)

If a Party chooses not to participate in the process or the hearing, the live hearing may still proceed in the absence of a Party, and Mohawk Valley Community College may reach a determination of responsibility in their absence, including through any evidence gathered and other witness statements. Mohawk Valley Community College will not threaten, coerce,

³¹ 34 C.F.R. 106.46(g).

intimidate or discriminate against any Party in an attempt to secure the Party's participation. The decisionmaker cannot draw an inference about the determination regarding responsibility based solely on a Party's absence from the live hearing, or a refusal to answer questions.

The Parties shall be subject to Mohawk Valley Community College's rules of decorum.

The Decisionmaker

The hearing body will consist of a single decisionmaker OR a panel of three decisionmakers depending on the Reporter's choice of investigative process. No member of the hearing body will have served as the Title IX Coordinator, Title IX investigator/facilitator, advisor to any Party in the case, or a witness for or against either Party in the case, nor may any member of the hearing body serve on the appeals body in the case. No member of the hearing body will have a conflict of interest or bias in favor of or against Complainants or Respondents generally, or in favor of or against the Parties to the particular case. The hearing body will be trained prior to serving during any hearing. The Parties will have an opportunity to raise any objections regarding a decisionmaker's actual or perceived conflicts of interest or bias at the commencement of the live hearing.

Advisor of Choice

The Parties have the right to select an advisor of their choice, who may be, but is not required to be, an attorney. The advisor of choice may accompany the Parties to any meeting or hearing they are permitted to attend but may not speak for the Party. An advisor of choice is not prohibited from being a witness in the hearing. Advisors of choice are subject to Mohawk Valley Community College's rules of decorum, and may be removed upon violation of those rules

The advisor of choice may accompany the Parties to any meeting or hearing they are permitted to attend, but may not speak for the Party, except for the purpose of cross-examination in a Formal 3-Person Panel Hearing. In that format, the Parties are not permitted to conduct cross-examination; it must be conducted by the advisor of choice. As a result, if a Party does not select an advisor to serve in this role for the limited purpose of conducting cross-examination one will be appointed at no fee or charge to the Party. The advisor of choice is not prohibited from having a conflict of interest or bias in favor of or against Complainants or Respondents generally, or in favor or against the Parties to the particular case. If a Party does not attend the live hearing, the Party's advisor of choice may appear and conduct cross-examination on their behalf.

Witnesses

Witnesses cannot be compelled to participate in the live hearing and have the right not to participate in the hearing free from Retaliation. Witnesses are subject to Mohawk Valley Community College's rules of decorum and may be removed upon violation of those rules.

Hearing Procedures

For all live hearings conducted, the Chair will open and establish rules and expectations for the hearing. The Parties will each be given an opportunity to provide opening statements. Questioning of the Parties and witnesses will occur according to the procedures below.

Questioning Parties and Witnesses

During a live hearing, each Party or Party's advisor is allowed to ask Relevant and not otherwise impermissible questions and follow-up questions of the Parties and witnesses. No questioning of another Party or witness will be conducted by a Party personally.

Where questioning is advisor-conducted, and a Party does not have an advisor to ask questions of their behalf, Mohawk Valley Community College will provide the Party with a list of trained advisors, without charge to the Party, for the purpose of advisor-conducted questioning. Such an appointed advisor will not be a Confidential Employee and Mohawk Valley Community College may appoint, but is not required to appoint, an attorney to serve as an advisor.

Procedures for Decisionmaker's Evaluation of Questions and Limitation on Questions

The single decision maker or Chair of hearing panel, depending on the investigative format that has been chosen will determine whether a proposed question is Relevant and not otherwise impermissible as described in this Grievance Procedure, prior to the question being posed, and will explain any decision to exclude a question as not Relevant or otherwise impermissible.

If the single decision maker or Chair of hearing panel determines that a Party's question is Relevant and not otherwise impermissible, then the question must be asked unless such question is unclear or harassing of the Party or witness being questioned. The single decision maker or Chair of hearing panel must give a Party an opportunity to clarify or revise a question that the single decision maker or Chair of hearing panel has determined is unclear or harassing and, if the Party sufficiently clarifies or revises a question so that it is no longer unclear or harassing, the question must be asked.

Refusal to Respond to Questions and Inferences Based on Refusal to Respond to Questions

A single decisionmaker OR a panel of decisionmakers may choose to place less or no weight upon statements by a Party or witness who refuses to respond to questions deemed Relevant and not impermissible.

The single decisionmaker OR a panel of decisionmakers must not draw an inference about whether Sex-Based Harassment occurred based solely on a Party's or witness's refusal to respond to such questions.

Continuances or Granting Extensions

Mohawk Valley Community College may determine that multiple sessions or a continuance (a pause on the continuation of the hearing until a later date or time) is needed to complete a hearing. If so, Mohawk Valley Community College will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

I. SINGLE INVESTIGATOR/FACILITATOR MODEL³²

If the Single Investigator/facilitator model has been chosen as the investigative format, Title IX requires that there be live questioning to 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-Based Harassment.

The investigator/facilitator/decisionmaker will question Parties and witnesses 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-Based Harassment. This will occur during individual meetings with a Party or witness.

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 investigator/facilitator/decisionmaker during one or more individual meetings, including follow-up meetings, with a Party or witness, subject to the appropriate procedures outlined below regarding the decisionmaker's advance evaluation of all questions. Each Party will be provided with an audio or audiovisual recording or transcript with enough time for the Party to have a reasonable opportunity to propose follow-up questions.

J. Determination Regarding Responsibility³³

Standard of Proof

Mohawk Valley Community College uses the preponderance of the evidence standard of proof to determine whether or not Sex-Based Harassment occurred. This means that the investigation and hearing determine whether it is more likely than not that a violation of the Grievance Procedure occurred.

³² note – if an institution chooses this model, this can be incorporated into the investigations section for ease of reference. See 34 C.F.R. 106.46(f)(i) for more information about this model.

³³ 34 C.F.R. 106.45(h); 34 C.F.R. 106.46(h).

General Considerations for Evaluating Evidence and Testimony

The decisionmaker is required to evaluate Relevant and not otherwise impermissible evidence for its persuasiveness. If the decisionmaker is not persuaded under the applicable standard by the evidence that Sex-Based Harassment occurred, whatever the quantity of the evidence is, the decisionmaker must not determine that Sex-Based Harassment occurred.

Determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the decisionmaker. Decisionmakers shall not draw inferences regarding a Party or witness' credibility based on the Party or witness' status as a Complainant, Respondent, or witness, nor shall it base its judgments in stereotypes about how a Party or witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the Party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence. However, credibility judgments should not rest on whether a Party or witness' testimony is non-linear or incomplete, or if the Party or witness is displaying stress or anxiety.

Decision makers will afford the highest weight relative to other testimony to first-hand testimony by Parties and witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e. tending to prove and disprove the allegations) evidence will be weighed in equal fashion.

A witness' testimony regarding third-Party knowledge of the facts at issue will be allowed but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred. (See detailed Procedures for more information regarding witnesses)

Communication of the Determination in Writing

All determinations on whether Sex-Based Harassment occurred will be communicated to the Parties in writing, simultaneously.

The written determination will include:

- A description of the alleged Sex-Based Harassment;
- Information about the policies and procedures that Mohawk Valley Community College used to evaluate the allegations;
- The decisionmaker's evaluation of the Relevant evidence and determination on whether Sex-Based Harassment occurred;
- Any Disciplinary Sanctions Mohawk Valley Community College will impose on the Respondent, whether Remedies other than the imposition of Disciplinary Sanctions will

be provided by Mohawk Valley Community College to the Complainant, and, to the extent appropriate, other Students identified by Mohawk Valley Community College to be experiencing the effects of Sex-Based Harassment, if there is a finding that Sex-Based Harassment occurred; and

- Mohawk Valley Community College's procedures for Complainant and Respondent to appeal.

Timeline of Determination Regarding Responsibility

If there are no extenuating circumstances, the determination regarding responsibility will be issued by Mohawk Valley Community College within four business days of the completion of the hearing.

Finality of Determination

The determination regarding responsibility becomes final either on the date that Mohawk Valley Community College 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.

K. Appeals³⁴

Each Party may appeal a determination regarding responsibility. To appeal, a Party must submit their written request for appeal within five business days of being notified of the decision, indicating the grounds for appeal.

For appeals resulting from dismissal of a Complaint, please see the section on *Dismissal of Complaints*.

Grounds for Appeal

The limited grounds for appeal available are as follows:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available when the determination whether Sex-Based Harassment occurred or dismissal was made; and
- The Title IX Coordinator, investigator/facilitator, or decisionmaker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome.

Additional Procedures for Appeal Process

³⁴ 34 C.F.R. 106.45(i); 34 C.F.R 106.46(i).

Mohawk Valley Community College will notify the Parties of any appeal, provide the Parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome, and will notify the Parties of the result of the appeal and the rationale for the result. The decisionmaker for the appeal shall not have taken part in an investigation of the allegations or dismissal of the complaint.

The submission of an appeal stays (or pauses) any sanctions for the period during which an appeal determination is being assessed. Supportive Measures and remote learning opportunities remain available while an appeal is being deliberated and before a final decision has been made.

Appeals consist of an appeal form and appeal narrative. The appeal narrative may be no longer than two pages, (including attachments). Appeals should be submitted in electronic form using ARIAL or TIMES NEW ROMAN, 12-point font, and single-spaced. Appeals that do not meet these standards may be returned to the Party for correction, but the time for appeal will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards.³⁵

The appeal process at Mohawk Valley Community consists of two steps: 1) a Request for appeal based upon established criteria and 2) a hearing if the request for appeal was approved. Appeal requests will be decided by the Non-Academic Appeals Committee who will be free of conflict of interest and bias, and will not have served as investigator/facilitator, Title IX Coordinator, or hearing decisionmaker in the same matter. If the request is approved, alternate members (as/if available) of the Non-Academic Appeals Committee shall comprise the appeal hearing body.

The outcome of the appeal will be provided in writing simultaneously to both Parties and include rationale for the decision. The determination of the Appeal Decision-making Body is final.

L. OPTIONAL: INFORMAL RESOLUTION³⁶

Procedures for Entering and Exiting Informal Resolution Process

At any time prior to determining whether Sex-Based Harassment occurred under this Grievance Procedure, including prior to making a Complaint,³⁷ Parties may instead seek Mohawk Valley Community College's assistance to resolve allegations of Sex-Based Harassment, and may elect to enter the informal resolution process.

The Parties may voluntarily elect to enter the Mohawk Valley Community College's informal resolution process at any time through an informed written consent. This informed written consent will include all terms of the elected informal process, including a statement that any agreement reached through the process is binding on the Parties.

³⁶ 34 C.F.R. 106.44(k); 34 C.F.R. 106.45(k); 34 C.F.R. 106.46(j).

³⁷ 89 FR 33624-25.

No Party may be required to participate in informal resolution, and Mohawk Valley Community College may never condition enrollment, employment, or enjoyment of any other right or privilege upon agreeing to informal resolution.

The Parties may elect to leave the informal resolution process at any point until the informal resolution process is concluded. If a Party elects to leave the informal resolution process, the Grievance Procedure that the Parties paused will continue. In participating in the informal resolution process, the Parties understand that the timeframes governing the Grievance Procedure will temporarily cease, and only reinstate upon reentry into the Grievance Procedure.

Supportive Measures will be available, or continue to be available if already provided, during an informal resolution process, if elected to proceed. The Title IX Coordinator will also, to the extent necessary, take other appropriate prompt and effective steps to ensure that Sex-Based Harassment does not continue or recur within Mohawk Valley Community College's Education Program or Activity.

Notice Prior to Entry into Informal Resolution Process

Before the initiation of an informal resolution process, the Title IX Coordinator must provide to the Parties a written notice that explains:

- The allegations;
- The requirements of the informal resolution process;
- That, prior to agreeing to a resolution, any Party has the right to withdraw from the informal resolution process and to initiate or resume Mohawk Valley Community College's Grievance Procedure;
- That the Parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the Parties from initiating or resuming Mohawk Valley Community College's Grievance Procedure 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 Mohawk Valley Community College will maintain and whether and how Mohawk Valley Community College could disclose such information for use in its Grievance Procedure if it is initiated or resumed.

*Determination to Approve Entry into Informal Resolution Process*³⁸

Even where the Parties agree to submit a matter to informal resolution, the Title IX Coordinator or other designated official must³⁹ approve the decision to move the matter to the informal

³⁸ 34 C.F.R. § 106.44(k)(1)(i) provides that Mohawk Valley Community College has discretion to determine whether it's appropriate to offer.

³⁹ Informal resolution processes commonly require the Title IX Coordinator or other designated official to approve the Parties' mutual and voluntary decision to handle the complaint through an informal process, but such an approval process is not required under the Title IX Final Rules.

resolution process and may determine that informal resolution is not appropriate under the circumstances.

Factors that the Title IX Coordinator or other designated official may weigh in considering the appropriateness of the informal resolution process include, but are not limited to, the gravity of the allegations, whether there is an ongoing threat of harm or safety to the campus, whether the Respondent is a repeat offender, whether the alleged conduct would present a future risk of harm to others, and whether the Parties are participating in good faith. This determination is not subject to appeal.

Informal resolution may be available to address allegations of Student-on-Student and is not allowed to address allegations of employee-on-Student Sex-Based Harassment.⁴⁰

At any time after the commencement of the informal resolution process, the Title IX Coordinator or other designated official may determine that the informal resolution process is not an appropriate method for resolving the matter and may require that the matter be resolved through the Grievance Procedures. This determination is not subject to appeal.

If informal resolution is approved or denied, Mohawk Valley Community College will provide the outcome in writing simultaneously to the Parties. If informal resolution is approved, the Title IX Coordinator shall also provide the information of the facilitator in writing to the Parties in a reasonable timeframe once the facilitator is assigned.

Role of the Facilitator/Investigator/facilitator

Informal resolution processes are managed by trained investigator/facilitators and facilitated by the Title IX Coordinator. Any person designated to facilitate informal resolution must not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. The Title IX Coordinator may never serve as the investigator/facilitator.

All facilitators must have specialized training, required by law and regulation. Such training includes:

- Mohawk Valley Community College's obligation to address sex discrimination, including Sex-Based Harassment, in its Education Program or Activity;
- The scope of conduct that constitutes sex discrimination, including Sex-Based Harassment, under Title IX, including the definition of Sex-Based Harassment;
- All applicable notification and information requirements related to parental, family, or marital status, including pregnancy and related conditions, and Mohawk Valley Community College's response to sex discrimination;

⁴⁰ Regulations now allow informal resolution for employee respondent complaints. 34 C.F.R. § 106.44(k)(1).

- The rules and practices associated with Mohawk Valley Community College’s informal resolution process; and
- How to serve impartially, including by avoiding conflicts of interest and bias.

Contents of Informal Resolution Agreements

Potential terms that may be included in an informal resolution agreement between the Parties include but are not limited to:

- Restrictions on contact; and
- Restrictions on the Respondent’s participation in one or more of Mohawk Valley Community College’s education programs or activities or attendance at specific events, including restrictions Mohawk Valley Community College could have imposed as Remedies or Disciplinary Sanctions had Mohawk Valley Community College determined at the conclusion of the Grievance Procedure that Sex-Based Harassment occurred.

Breach of Informal Resolution Agreements⁴¹

If a Party breaches the resolution or if Mohawk Valley Community College has other compelling reasons, such as if it learns of any fraud by a Party in entering into the agreement, Mohawk Valley Community College may void the agreement and initiate or resume the Grievance Procedure.

Confidentiality:⁴²

In entering the informal resolution process, the Parties agree that any testimony and evidence (including admissions of responsibility) they share or receive during the informal resolution process concerning the allegations of the Complaint are confidential while the Parties participate in the informal resolution process. No evidence concerning the allegations obtained within the informal resolution process may be disseminated to any person, provided that any Party to the informal resolution process may generally discuss the allegations under investigation with a parent, friend, advisor, or other source of emotional support, or with an advocacy organization. Should the Parties withdraw from the informal resolution process, information disclosed or obtained for purposes of the informal resolution process may be incorporated into the Grievance Procedure, provided that this information is disclosed and reviewed by the Parties under Mohawk Valley Community College’s Grievance Procedure.

Informal Resolution Options

Mohawk Valley Community College offers the following informal resolution procedures for addressing Complaints of Sex-Based Harassment described under this Grievance Procedure

⁴¹ 89 FR 33625.

Administrative Resolution

Should the Parties mutually determine to enter the informal resolution process, and the Respondent elects to accept responsibility for the allegations of the Complaint at any point during the informal resolution process, Mohawk Valley Community College may administratively resolve the Complaint.

Where the Respondent admits responsibility, the Parties will receive simultaneous written notification of the acceptance of responsibility, and the facilitator/investigator/facilitator will determine the Respondent's sanction and other Remedies, as appropriate and consistent with institutional policy and make that recommendation to the Title IX Coordinator. The Title IX Coordinator will either agree with the recommendation, make a request to modify the recommendation or dismiss the recommendation. Upon completion of that step, the Parties will be given an opportunity to be heard at the sanctions hearing, including without limitation, the submission of impact statements. The Parties may be accompanied by their Advisor, but questioning of Parties or witnesses will not be permitted. The Parties will receive simultaneous written notification of the decision regarding sanctions and remedies, which may be appealed according to the process described below.

Mediation

The purpose of mediation is for the Parties who are in conflict to identify the implications of a Student's actions and, with the assistance of a trained facilitator/investigator/facilitator, identify points of agreement and appropriate remedies to address them. Either Party can request mediation to seek resolution; mediation will be used only with the consent of both Parties, who will be asked not to contact one another during the process. The Title IX Coordinator will also review any request for mediation and may decline to mediate based on the facts and circumstances of the particular case. Either Party has the right to terminate the mediation process and choose or resume another option for resolution at any time.

The mediation process will typically commence within 10 days after the Facilitator receives consent to mediate from both Parties and has made its determination to allow informal resolution to go forward. Mediation will continue until concluded or terminated by either Party, the facilitator, or the Title IX Coordinator. During mediation, any potential investigation will halt, and calculations for time frames will be stayed. If the mediation results in a resolution, the disciplinary process will be concluded, and the matter will be closed. If a resolution cannot be reached, the matter will be referred to the Title IX Coordinator to re-evaluate other options for resolution, including investigation or proceeding forward with the Grievance Procedure.

During mediation, a facilitator will guide a discussion between the Parties. In circumstances where the Parties do not wish to meet face to face, either Party can request "caucus" mediation, and the facilitator will conduct separate meetings. Whether or not the Parties agree to meet face

to face, each Party will be permitted to bring an advisor of their choice to any meetings who may be, but is not required to be, an attorney.

At the conclusion of the mediation, the Title IX Coordinator will facilitate the agreement that was reached between the Parties and memorialize it in writing for both parties to sign either in person together or separately or electronically. The Title IX Coordinator will monitor adherence to the proposed solution and close the matter when compliance is satisfactory.

A. Dismissal of a Complaint

Bases for Dismissal

Mohawk Valley Community College may dismiss a Complaint of sex discrimination for any of the following reasons:

- Mohawk Valley Community College is unable to identify the Respondent after taking reasonable steps to do so;
- The Respondent is not participating in Mohawk Valley Community College's Education Program or Activity and is not employed by Mohawk Valley Community College;
- The Complainant voluntarily withdraws any or all of the allegations in the Complaint, the Title IX Coordinator declines to initiate a Complaint under the bases described in these procedures, and Mohawk Valley Community College determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the Complaint, if any, would not constitute sex discrimination under Title IX or these grievance procedures even if proven; or
- Mohawk Valley Community College determines that the conduct alleged in the Complaint, even if proven, would not constitute sex discrimination under Title IX or these procedures. Note: Mohawk Valley Community College must make reasonable efforts to clarify the allegations with the Complainant before dismissing under this basis.

Notice of Dismissal

Upon dismissal, Mohawk Valley Community College will promptly notify the Complainant of the basis for the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then Mohawk Valley Community College will also notify the Respondent of the dismissal and the basis for the dismissal promptly following notification to the Complainant, or simultaneously if notification is in writing.

Mohawk Valley Community College will notify the Complainant that a dismissal may be appealed and will provide the Complainant with an opportunity to appeal the dismissal of a Complaint. If the dismissal occurs after the Respondent has been notified of the allegations, then Mohawk Valley Community College will also notify the Respondent that the dismissal may be appealed. Dismissals may be appealed on the following bases:

- Procedural irregularity that would change the outcome;

- New evidence that would change the outcome and that was not reasonably available when the dismissal was made; and
- The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome.

Appeal rights must also be outlined in any notification of dismissal of a Complaint, as outlined below.

B. Appeal of Dismissals and Determinations⁴³

Mohawk Valley Community College offers the following process for appeals from a dismissal or a determination whether sex discrimination occurred:

If the dismissal or determination is appealed, Mohawk Valley Community College will:

- 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 decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the Complaint;
- Ensure that the decisionmaker 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.

When a Complaint is dismissed, Mohawk Valley Community College will, at a minimum:

- Offer supportive measures to the Complainant as appropriate.
- If the Respondent has been notified of the allegations, offer supportive measures to the Respondent as appropriate; and
- Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not continue or recur within Mohawk Valley Community College's Education Program or Activity.

The submission of appeal stays (or pauses) any sanctions for the pendency (or duration while the appeal is being deliberated and decided upon) of an appeal. Supportive measures and remote learning opportunities remain available during the pendency of the appeal.

If a Party appeals, Mohawk Valley Community College will as soon as practicable notify the other Party in writing of the appeal, however the time for appeal shall be offered equitably to all Parties and shall not be extended for any Party solely because the other Party filed an appeal.

⁴³ 34 C.F.R. 106.45(i).

Appeals consist of an appeal form and appeal narrative. The appeal narrative may be no longer than two pages, (including attachments). Appeals should be submitted in electronic form using ARIAL or TIMES NEW ROMAN, 12-point font, and single-spaced. Appeals that do not meet these standards may be returned to the Party for correction, but the time for appeal will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards.⁴⁴

Appeal requests will be decided by the Non-Academic Appeals Committee who will be free of conflict of interest and bias, and will not have served as investigator, Title IX Coordinator, or hearing decisionmaker in the same matter. If the request is approved, alternate members (as/if available) of the Non-Academic Appeals Committee shall comprise the appeal hearing body.

The outcome of the appeal will be provided in writing simultaneously to both Parties and include rationale for the decision. The determination of the Appeal Decision-making Body is final.

XI. Retaliation⁴⁵

When Mohawk Valley Community College has information about conduct that reasonably may constitute Retaliation under Title IX or its Grievance Procedure, Mohawk Valley Community College is obligated to initiate its Grievance Procedure or, as appropriate, Mohawk Valley Community College's informal resolution process.

Mohawk Valley Community College will keep the identity of any individual who has made a report or Complaint of sex discrimination confidential, including the identity of any individual who has made a report or filed a Complaint of Sex-Based Harassment or sex discrimination under Mohawk Valley Community College's Title IX Grievance Procedure, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding under Mohawk Valley Community College's Title IX Grievance Procedure.

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations.

No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or Complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under Mohawk Valley Community College's Grievance Procedure.

⁴⁵ 34 C.F.R. 106.71.

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX, or its implementing regulations constitutes Retaliation. This includes any charges filed against an individual for Code of Conduct violations that do not involve sex discrimination or Sex-Based Harassment, but that arise from the same facts or circumstances as a report or Complaint of sex discrimination or a report or Complaint of Sex-Based Harassment.

Policy for Alcohol / Drug Use Amnesty in Sexual and Interpersonal Violence Cases

The health and safety of every student at Mohawk Valley Community College is of utmost importance. The College recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The College strongly encourages students to report incidents of domestic violence, dating violence, stalking, or sexual assault to institution officials.

A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to College officials or law enforcement will not be subject to the College's code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

Complaints alleging Retaliation may be filed with the Title IX Coordinator and the appropriate steps will be undertaken to investigate.

CODE CHARGES: Sex-Based Harassment: sexual harassment and other harassment on the basis of sex, including harassment because of gender identity, sexual orientation, sex characteristics, sex stereotypes, and/or pregnancy and other conditions, that is:

- A. *Quid pro quo harassment.* An employee, agent or other person authorized by Mohawk Valley Community College'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;
- B. *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 Mohawk Valley Community College'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:

- (i) the degree to which the conduct affected the Complainant's ability to access Mohawk Valley Community College's education program or activity;
- (ii) the type, frequency, and duration of the conduct;
- (iii) the Parties' ages, roles within Mohawk Valley Community College's education program or activity, previous interactions and other factors about each Party that may be Relevant to evaluating the effects of the conduct;
- (iv) the location of the conduct and the context in which the conduct occurred;
and
- (v) other Sex-Based Harassment in Mohawk Valley Community College's education program or activity;

Code Charge: Sexual Assault: as defined in the Clery Act, meaning any sexual act directed against another person, without the Consent of the victim, including instances where the victim is incapable of giving Consent;

Code Charge: Dating Violence: as defined in the Violence Against Women Act (VAWA) Reauthorization of 2022 and the VAWA Amendments to the Clery Act, is any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) Where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) the type of relationship; and (iii) The frequency of interaction between the persons involved in the relationship.

Code Charge: Domestic Violence: any felony or misdemeanor crimes committed by a person who: (A) is a current or former partner of the victim under the family or Domestic Violence laws of New York State or a person similarly situated to a spouse of the victim; (B) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; (C) shared a child in common with the victim; or (D) commits acts against a youth or adult victim who is protected from those acts under the family or Domestic Violence laws of New York State.

Code Charge: Stalking: engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (A) fear for the person's safety or the safety of others; or (B) suffer substantial emotional distress.

MVCC Student Title IX Sanctions

The College views education to be its primary focus. However, when a violation of the College Title IX policy occurs and a student is found in violation of that policy, consequences for such actions must be enforced. The sanctions below may be applied by a Title IX Investigator/facilitator and subsequently approved by a Title IX Coordinator. These sanctions apply to students. For definitions of each please see the Title IX website.

Warning/Reprimand
Referral for Assistance
Title IX Probation
Educational Sanctions
Restrictive Measures
Reassignment
Work assignment/College or community sponsored event or program
Expulsion from a Course
Expulsion from a Program
Residence Hall Dismissal
Suspension
Expulsion
False Charges
Important Notes

MVCC Employee Title IX Sanctions

When an MVCC employee is found in violation of the College's Title IX policy, consequences for such actions shall be approved by the Title IX Coordinator and enforced by the Executive Director of Human Resources in accordance with the appropriate collective bargaining agreement and/or Board of Trustee Policy.

Counsel/Warning/Reprimand
Referral for Assistance
Suspension
False Charges