

5.1.17 Prohibited Sex Discrimination, Sex-Based Harassment, and Retaliation (2024)

1. Purpose

MCCCD seeks to comply with all federal, state, and local laws, regulations, and ordinances prohibiting sex discrimination. MCCCD does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of actual or perceived sex. To ensure compliance with federal, state and local laws, regulations, and ordinances prohibiting sex discrimination, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, MCCCD has developed regulations and procedures that provide for a prompt, fair, and impartial resolution of allegations of sex discrimination, sex-based harassment, or retaliation. This Regulation covers sex discrimination in both employment and access to educational opportunities. Therefore, any member of the MCCCD community whose acts deny, deprive, unreasonably interfere with or limit the education or employment, and/or social access, benefits, and/or opportunities of any member of the MCCCD community, guest, or visitor on the basis of that person's actual or perceived sex, is in violation of this Regulation. MCCCD will promptly and effectively address any such discrimination of which it has knowledge/notice using the resolution process outlined in the Prohibited Sex Discrimination, Sex-based Harassment, and Retaliation procedures.

2. Applicability and Jurisdiction

This Regulation is only applicable to alleged incidents that occur on or after August 1, 2024. For alleged incidents of sex discrimination or sexual harassment occurring prior to August 1, 2024, the regulation and procedures in place at the time of the alleged incident apply. Applicable versions of those policies and procedures are available at <https://district.maricopa.edu/administrative-regulations/5-non-discrimination/5-1>.

This Regulation applies to the MCCCD's education programs and activities (defined as including locations, events, or circumstances in which MCCCD exercises substantial control over both the respondent and the context in which the conduct occurred), circumstances where MCCCD has disciplinary authority, and to misconduct occurring within any building owned or controlled by an MCCCD recognized student organization. This Regulation also applies to conduct that is subject to MCCCD's disciplinary authority, as reflected in other regulations. The Respondent must be a member of MCCCD's community in order for its regulations to apply. MCCCD may also extend jurisdiction to off-campus and/or to online conduct when the conduct affects a substantial MCCCD interest.

A substantial MCCCD interest includes:

- A. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law.
- B. Any situation in which it is determined that the respondent poses an imminent and serious threat to the health or safety of any student, employee, or other individual.
- C. Any situation that significantly impinges upon the rights, property, or achievements of others, significantly breaches the peace, and/or causes social disorder.
- D. Any situation that substantially interferes with MCCCD's educational interests or mission.

All vendors serving MCCCD through third-party contracts are subject to the policies and procedures of their employers and/or to these Regulations and procedures to which their employer has agreed to be bound by their contracts.

3. Reporting Complaints

Internal

Each MCCCDC college and campus has a designated Title IX/504 Regional Director (“TIXC”) who serves as the appropriate Administrator who oversees implementation of the Regulation and Procedure. The TIXC has the primary responsibility for coordinating MCCCDC’s efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent prohibited sex discrimination, sex-based harassment, and retaliation.

An individual who believes that they have been subjected to sex discrimination, sex-based harassment, or retaliation in violation of this Regulation should report the matter immediately as set forth below to obtain information about resolving concerns, including complaint-filing options and procedures, and to enable MCCCDC to take prompt remedial action. Complaints may be reported to any employee or TIXC.

Such a report may be made at any time (including during non-business hours) by using the telephone number or email address listed for the Title IX Coordinator or any other official listed. TIXC can be found:

Title IX/504 Regional Directors

compliance@domail.maricopa.edu

<https://district.maricopa.edu/consumer-information/title-ix/regional-directors>

Report online, using the reporting form posted at <https://district.maricopa.edu/consumer-information/reporting>.

If the alleged policy violator is a Title IX/504 Regional Director, then the individual who has been the subject of sex discrimination, sex-based harassment, or retaliation in violation of this policy may report to MCCCDC’s District Human Resources Office.

External

Concerns about MCCCDC’s application of this Regulation and compliance with Title IX of the education amendments of 1972 may be addressed to:

OFFICE FOR CIVIL RIGHTS (OCR)
U.S. DEPARTMENT OF EDUCATION
400 MARYLAND AVENUE, SW
WASHINGTON, D.C. 20202-1100
CUSTOMER SERVICE HOTLINE: (800) 421-3481
FACSIMILE: (202) 453-6012
TDD: (877) 521-2172
EMAIL: OCR@ED.GOV
WEB: [HTTP://WWW.ED.GOV/OCR](http://WWW.ED.GOV/OCR)

OFFICE FOR CIVIL RIGHTS (OCR)
DENVER OFFICE
U.S. DEPARTMENT OF EDUCATION
CESAR E. CHAVEZ MEMORIAL BUILDING

1244 SPEER BOULEVARD, SUITE 310
DENVER, CO 80204-3582
TELEPHONE: (303) 844-5695
FACSIMILE: (303) 844-4303
EMAIL: OCR.DENVER@ED.GOV

For complaints involving employee-on-employee conduct:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)
PHOENIX DISTRICT OFFICE
3300 N. CENTRAL AVE., STE. 690,
PHOENIX, AZ 85012
PHONE 1-800-669-4000
FAX 602-640-5071
TTY 1-800-669-6820
<https://www.eeoc.gov/field-office/phoenix/location>

4. Mandated Reporting and Confidential Employees

A. Mandated Reporters

MCCCD employees (including student-employees), other than those deemed confidential employees, are mandated reporters and are expected to promptly report all known details of actual or suspected sex discrimination, sex-based harassment, retaliation, and/or other prohibited conduct to appropriate officials immediately, although there are some limited exceptions. Supportive measures may be offered as the result of such disclosures without formal MCCCD action. Mandated reporters must share all details received from the complainant including personally identifiable information, with the TIXC.

A Complainant who expects formal action in response to their allegations, but does not wish to contact the TIXC should report their allegations to any mandated reporter who can connect them with resources to report alleged crimes and/or regulations violations. Mandated reporters will, within twenty-four (24) hours, refer reports to the TIXC (and/or police, if desired by the complainant or required by law), who will take action.

Failure of a mandated reporter to report an incident of sex discrimination, sex-based harassment, or retaliation of which they become aware is a violation of MCCCD regulation and the mandated reporter may be subject to disciplinary action, up to and including termination, for failure to comply/failure to report.

B. Confidential Employee

To enable complainants to access support and resources without filing a complaint, MCCCD has designated specific employees as confidential resources. Those designated by MCCCD as confidential resources are not required to report actual or suspected sex discrimination, sex-based harassment, or retaliation in a way that identifies the parties. They will, however, provide the complainant with the TIXC's contact information and offer options and resources without any obligation to inform an outside agency or MCCCD official unless a complainant has requested the information be shared.

The complainant may speak with the following designated confidential employees: MCCCD Ombuds.

Employees who have confidentiality as described above, and who receive notice within the scope of their confidential roles will timely submit anonymous statistical information for Clery Act statistical reporting purposes unless they believe it would be harmful to their client or patient. These individuals will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor, elder, or individual with a disability, or when required to disclose by law or court order.

Complainants may speak with individuals unaffiliated (off-campus/non-employees) with MCCCCD without concern that this Regulation will require them to disclose information to the institution without permission:

- Licensed professional counselors and other medical providers
- Local rape crisis counselors
- Domestic violence resources
- Local or state assistance agencies
- Clergy/Chaplains
- Attorneys

5. Federal Statistical Reporting Obligations

Certain campus officials (those deemed Campus Security Authorities) have a duty to report the following for federal statistical reporting purposes (Clery Act):

- 1) All “primary crimes,” which include criminal homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- 2) Hate crimes, which include any bias-motivated primary crime as well as any bias-motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- 3) Violence Against Women Act (VAWA-based crimes), which include sexual assault, domestic violence, dating violence, and stalking; and
- 4) Arrests and referrals for disciplinary action for weapons law violations, liquor law violations, and drug abuse law violations.

All personally identifiable information is kept private, but statistical information regarding the type of incident and its general location (on- or off-campus or in the surrounding area, but no addresses are given) must be shared with campus law enforcement for publication in the annual security report and daily campus crime log.

6. Federal Timely Warning Obligations

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, MCCCCD must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus MCCCCD campus community. MCCCCD will ensure that a Complainant’s name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

7. Amnesty

It is in the best interests of the MCCCCD community that complainants choose to give notice of misconduct to MCCCCD officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process. To encourage reporting and participation in the process, MCCCCD maintains a policy of offering parties and witnesses amnesty from minor policy and regulation violations, such as underage consumption of alcohol or the use of illicit drugs related to the incident

being reported. Granting amnesty is a discretionary decision made by MCCCCD, and amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. A decision not to offer amnesty to a Respondent should not be based on sex nor gender, but should take into account the rationale for amnesty.

8. Confidentiality

MCCCCD makes every effort to preserve the parties' privacy. MCCCCD will not share the identity of any individual who has made a complaint of sex discrimination, sex-based harassment, or retaliation; any complainant; any individual who has been reported to be the perpetrator of sex discrimination, sex-based harassment, or retaliation; any respondent; or any witness, except as permitted by, or to fulfill the purposes, of applicable laws and regulations (e.g., Title IX), Family Educational Rights And Privacy Act (FERPA) and its implementing regulations, or as required by law; including any investigation, or resolution proceeding arising under these regulations and procedures.

9. Prohibited Conduct

This Regulation is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive, subject matters protected by academic freedom. The sections below describe the specific forms of legally prohibited sex discrimination, sex-based harassment, and retaliation that are also prohibited under MCCCCD Regulation. When speech or conduct is protected by academic freedom and/or the first amendment, it will not be considered a violation of MCCCCD regulation, though supportive measures will be offered to those impacted.

All offense definitions below encompass actual and/or attempted offenses.

A. Sex discrimination

Sex discrimination is different treatment with respect to a person's employment or participation in an education program or activity based, in whole or in part, upon the person's actual or perceived sex.

Discrimination can take two primary forms:

1) Disparate treatment discrimination:

- a. Any intentional differential treatment of a person or persons that is based on a person's actual or perceived sex and that:
- b. Excludes a person from participation in;
- c. Denies a person benefits of; or
- d. Otherwise adversely affects a term or condition of a person's participation in an MCCCCD program or activity.

2) Disparate impact discrimination:

- a. Disparate impact occurs when policies or practices that appear to be neutral unintentionally result in a disproportionate impact on the basis of sex that:
 - i. Excludes a person from participation in;
 - ii. Denies a person benefits of; or

- iii. Otherwise adversely affects a term or condition of a person's participation in an MCCCCD program or activity.

B. Sex-based harassment (applicable under title ix, title vii, and the fair housing act)

Sex-based harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex (conduct that is sexual in nature, or that is directed to the complainant because of his/her/their actual or perceived sex or gender identity), including sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity; sexual assault, dating violence, domestic violence, and stalking.

1) Quid pro quo:

- An employee, agent, or other person authorized by MCCCCD,
- Conditions the provision of an aid, benefit, or service of the under MCCCCD's educational program or activity,
- Explicitly or impliedly conditioning the provision of such aid, benefit, or service,
- On an individual'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 effectively limits or denies a person's ability to participate in or benefit from equal access to the MCCCCD'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:

1. The degree to which the conduct affected the complainant's ability to access MCCCCD's education program or activity;
2. The type, frequency, and duration of the conduct;
3. The parties' ages, roles within MCCCCD's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
4. The location of the conduct and the context in which the conduct occurred; and
5. Other sex-based harassment in MCCCCD's education program or activity.

3) Sexual assault:

This would include having another person touch you sexually, forcibly, and/or without their consent

a. Rape:

- Penetration, no matter how slight,
- Of the vagina or anus,
- With any body part or object, or
- Oral penetration by a sex organ of another person,

- Without the consent of the complainant.

b. Fondling:

- The touching of the private body parts of the complainant (buttocks, groin, breasts),
- For the purpose of sexual gratification,
- Without the consent of the complainant,
- Including instances where the complainant is incapable of giving consent because of their age or because of a temporary or permanent mental incapacity.

c. Incest:

- Sexual intercourse,
- Between persons who are related to each other,
- Within the degrees wherein marriage is prohibited by Arizona law.

d. Statutory rape:

- Sexual intercourse,
- With a person who is under the Arizona statutory age of consent, which is the age of 18 years old.

4) Dating violence, defined as:

- Violence,
- On the basis of sex,
- Committed by a person,
- Who is in or has been in a social relationship of a romantic or intimate nature with the complainant.
 - The existence of such a relationship shall be determined based on the complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
 - Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - Dating violence does not include acts covered under the definition of domestic violence.

5) Domestic violence, defined as:

- Violence,
- On the basis of sex,
- Committed by a current or former spouse or intimate partner of the complainant,
- By a person with whom the complainant shares a child in common, or
- By a person who is cohabitating with, or has cohabitated with, the complainant as a spouse or intimate partner, or
- By a person similarly situated to a spouse of the complainant under the domestic or family violence laws of Arizona, or

- By any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family violence laws of Arizona.

6) Stalking, defined as:

- Engaging in a course of conduct,
- On the basis of sex,
- Directed at the complainant, that
 - Would cause a reasonable person to fear for the person's safety, or
 - The safety of others; or
 - Suffer substantial emotional distress.

For the purposes of this definition—

- Course of conduct means two or more acts, including, but not limited to, acts in which the respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the complainant.
- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

C. Sexual misconduct

1) Sexual exploitation:

- A person taking non-consensual or abusive sexual advantage of another, that does not constitute sex-based harassment as defined above,
- For their own benefit or for the benefit of anyone other than the person being exploited.

Examples of sexual exploitation include, but are not limited to:

- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
- Invasion of sexual privacy (e.g., doxxing)
- Knowingly making an unwelcome disclosure of (or threatening to disclose) a person's sexual orientation, gender identity, or gender expression
- Taking pictures, video, or audio recording of another person in a sexual act, or in any other sexually related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity; or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of non-consensual pornography
- Prostituting another person

- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection
- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
- Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing)
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
- Knowingly soliciting a minor for sexual activity
- Engaging in sex trafficking
- Knowingly creating, possessing, or disseminating child sexual abuse images or recordings
- Creating or disseminating synthetic media, including images, videos, or audio representations of individuals doing or saying sexually related things that never happened, or placing identifiable real people in fictitious pornographic or nude situations without their consent (i.e., deepfakes)

D. Other prohibited conduct

1) Bullying:

- Repeated and/or severe aggressive behavior
- That is likely to intimidate or intentionally hurt, control, or physically or mentally diminish the complainant,
- That is not speech or conduct that is otherwise protected by the first amendment.

2) Endangerment:

- Threatening or causing physical harm;
- Extreme verbal, emotional, or psychological abuse; or
- Other conduct which threatens or endangers the health or safety of any person or damages their property.

3) Hazing:

- Any act or action
- Which does or is likely to endanger the mental or physical health or safety of any person
- As it relates to a person's initiation, admission into, or affiliation with any MCCCCD group or organization.

For the purposes of this definition:

- It is not necessary that a person's initiation or continued membership is contingent upon participation in the activity, or that the activity was sanctioned or approved by the student group or student organization, for an allegation of hazing to be upheld.
- It shall not constitute an excuse or defense to a hazing allegation that the participants took part voluntarily, gave consent to the conduct, voluntarily assumed the risks or hardship of the activity, or that no injury was suffered or sustained.
- The actions of alumni, active, new, and/or prospective members of a student group or student organization may be considered hazing.
- Hazing is not confined to the student group or student organization with which the person subjected to the hazing is associated.

4) Retaliation:

- Adverse action, including intimidation, threats, coercion, or discrimination,
- Against any person,
- By MCCCCD, a student, employee, or a person authorized by MCCCCD to provide aid, benefit, or service under the MCCCCD's education program or activity,
- For the purpose of interfering with any right or privilege secured by law or regulation, or
- Because the person has engaged in protected activity, including reporting information, making a complaint, testifying, assisting, or participating or refusing to participate in any manner in an investigation or resolution process under AR. 5.1.17, including an informal resolution process, or in any other appropriate steps taken by MCCCCD to promptly and effectively end any sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects.

The exercise of rights protected under the first amendment does not constitute retaliation. It is also not retaliation for MCCCCD to pursue violations against those who make materially false statements in bad faith in the course of a resolution under this Regulation. However, the determination of responsibility, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.

5) Unauthorized disclosure:

- Distributing or otherwise publicizing materials created or produced during an investigation or resolution process except as required by law or as expressly permitted by MCCCCD; or
- Publicly disclosing institutional work product that contains personally identifiable information without authorization or consent.
- Nothing in this section restricts the ability of the parties to: obtain and present evidence, including by speaking to witnesses (as long as it does not constitute retaliation under this Regulation), consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the resolution process.

6) Failure to comply/process interference

- Intentional failure to comply with the reasonable directives of the TIXC in the performance of their official duties, including with the terms of a no contact order
- Intentional failure to comply with emergency removal or interim suspension terms

- Intentional failure to comply with sanctions
- Intentional failure to adhere to the terms of an informal resolution agreement
- Intentional failure to comply with mandated reporting duties as defined in this Regulation.
- Intentional interference with the resolution process, including, but not limited to:
 - Destruction of or concealing of evidence
 - Actual or attempted solicitation of knowingly false testimony or providing false testimony or evidence
 - Intimidating or bribing a witness or party

E. Sanction ranges

The following sanction ranges apply for prohibited conduct under this Regulation. Sanctions can be assigned outside of the specified ranges based on aggravating or mitigating circumstances, or the respondent's cumulative conduct record.

- **Sex discrimination:** warning through expulsion or termination (employees).
- **Quid pro quo harassment:** warning through expulsion or termination (employees).
- **Hostile environment harassment:** warning through expulsion or termination (employees).
- **Rape:** suspension through expulsion or termination (employees).
- **Fondling:** warning through expulsion or termination (employees).
- **Incest:** warning through probation.
- **Statutory rape:** warning through suspension or termination (employees).
- **Stalking:** probation through expulsion or termination (employees).
- **Dating/domestic violence:** probation through expulsion or termination (employees).
- **Sexual exploitation:** warning through expulsion or termination (employees).
- **Bullying:** warning through expulsion or termination (employees).
- **Endangerment:** warning through expulsion or termination (employees).
- **Hazing:** warning through expulsion or termination (employees).
- **Retaliation:** warning through expulsion or termination (employees).
- **Unauthorized disclosure:** warning through expulsion or termination (employees).
- **Failure to comply/process interference:** warning through expulsion or termination (employees).

F. Consent, Force, and Incapacitation

As used in the offenses above, the following definitions and understandings apply:

1) Consent is:

- Knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Consent is evaluated from the perspective of what a reasonable person would conclude are mutually understandable words or actions. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain their consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonably immediate time. Silence or the absence of resistance alone should not be interpreted as consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Consent to some sexual contact (such as kissing or fondling) cannot be assumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent. If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected. If a sexual partner shares the clear expectation for the use of a condom, or to avoid internal ejaculation, and those expectations are not honored, the failure to use a condom, removing a condom, or internal ejaculation can be considered acts of sexual assault.

Proof of consent or non-consent is not a burden placed on either party involved in a complaint. Instead, the burden remains on MCCCCD to determine whether its Regulation has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Going beyond the boundaries of consent is prohibited. Thus, unless a sexual partner has consented to slapping, hitting, hair pulling, strangulation, or other physical roughness during otherwise consensual sex, those acts may constitute dating violence or sexual assault.

- 2) **Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (E.G., "HAVE SEX WITH ME OR I'LL HIT YOU," WHICH ELICITS THE RESPONSE, "OKAY, DON'T HIT ME. I'LL DO WHAT YOU WANT.>"). Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Force is conduct that, if sufficiently severe, can negate consent.
- 3) **Coercion:** Coercion is unreasonable pressure for sexual activity. Coercive conduct, if sufficiently severe, can render a person's consent ineffective, because it is not voluntary. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point may be coercive. Coercion is evaluated based on the frequency, intensity, isolation, and duration of the pressure involved.
- 4) **Incapacitation:** Incapacitation is a state where a person is incapable of giving consent. Incapacitation occurs when someone cannot make rational, reasonable decisions because they

lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction). A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drug consumption. Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk. If the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated, the respondent is not in violation of this Regulation. “Should have known” is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment.

This Regulation also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating substances.

6. Retaliation

It is prohibited for MCCCDC or any member of MCCCDC’s community to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or 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 this Regulation and procedure. Acts of alleged retaliation should be reported immediately to the TIXC and will be promptly investigated. MCCCDC is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

Charges against an individual for Student Conduct Code violations that do not involve sex discrimination or sexual harassment but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

The following do not constitute retaliation under this policy:

- The exercise of rights protected under the First Amendment.
- Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure.

7. Online Harassment and Misconduct

This Regulation is written and interpreted broadly to include online and cyber manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on MCCCDC’s education programs and activities, or use of MCCCDC networks, technology, or equipment.

When harassing communications made on websites, social media, and other venues not controlled by the MCCCDC are reported to MCCCDC, MCCCDC will attempt to address and mitigate the effects of such communications. Nothing in this Regulation is intended to infringe upon or limit a person’s rights to free speech. Any online postings or other electronic communication by students and employees, including technology-facilitated bullying, stalking, harassment, etc., occurring completely outside of MCCCDC’s control (e.g., not on MCCCDC networks, websites, or between MCCCDC email accounts) will only be subject to this Regulation when such online conduct can be shown to cause (or will likely cause) a substantial in-program disruption or infringement on/harm to the rights of others. otherwise, such

communications are considered speech protected by the first amendment. Supportive measures for complainants will be provided.

Off-campus harassing speech by employees, whether online or in person, may be regulated by MCCCCD only when such speech is made in an employee's official or work-related capacity, including where the speaker holds themselves out as employees of an MCCCCD college or District office. Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but protected speech will not be subjected to discipline.

8. Definitions

Advisor. A person chosen by a party, or appointed by MCCCCD, who may accompany the party to meetings related to the resolution process, to advise the party on that process.

Appeal Decision-maker. The person who accepts or rejects a submitted appeal request, determines whether any of the appeal grounds are met, and directs responsive action(s) accordingly.

Complainant. A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination, sex-based harassment, or retaliation under the Regulation; or a person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination, sex-based harassment, retaliation, or other prohibited conduct under the Regulation and who was participating or attempting to participate in MCCCCD's education program or activity at the time of the alleged sex discrimination, sex-based harassment, retaliation, or other prohibited conduct.

Complaint. An oral or written request to MCCCCD that can objectively be understood as a request for MCCCCD to investigate and make a determination about the alleged violation(s).

Confidential Employee. An employee MCCCCD has designated as confidential for the purpose of providing services to persons related to sex discrimination, sex-based harassment, retaliation, or other prohibited conduct.

Day(s). Business day when MCCCCD is in normal operation.

Decision-maker. The person who reviews evidence, determines relevance, and makes the final determination of whether policy has been violated and/or assigns sanctions.

Education Program or Activity. Locations, events, or circumstances where MCCCCD exercises substantial control over both the Respondent and the context in which the sex discrimination, sex-based harassment, retaliation, or other prohibited conduct occurs and also includes any building owned or controlled by a student organization that is officially recognized by MCCCCD.

Employee. A person employed by MCCCCD either full- or part-time, including student employees when acting within the scope of their employment.

Final Determination. A conclusion by preponderance of the evidence that the alleged conduct occurred, or did not occur, and whether it did, or did not violate Regulation.

Resolution Process Pool. Any trained investigators, facilitators, decision-maker, appeals decision-makers/officers/chairs, and Advisors who may perform any or all of these roles as of the resolution process.

Hearing Decision-maker. A person who has decision-making and sanctioning authority within MCCC'D's Hearing Resolution process.

Informal Resolution. A resolution agreed to by the parties and approved by the TIXC that occurs prior to a final determination in the resolution process.

Investigation Report. The investigator's summary of all relevant evidence gathered during the investigation. Variations include the draft investigation report and the final investigation report.

Investigator. The person(s) authorized by MCCC'D with gathering facts about an alleged violation of this policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report.

Knowledge. When MCCC'D receives notice of conduct that reasonably may constitute sex discrimination, sex-based harassment, retaliation, or other prohibited conduct in its education program or activity.

Mandated Reporter. An employee of MCCC'D who is obligated by Regulation to share knowledge, notice, and/or reports of sex discrimination, sex-based harassment, retaliation, or other prohibited conduct with the title ix coordinator.

Parties include the Complainant(s) and Respondent(s), collectively.

Remedies. Post-resolution actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore or preserve equal access to MCCC'D's Educational program and activity.

Resolution. The result of an informal or administrative resolution process.

Respondent. An individual who has been reported to be the perpetrator of conduct that could constitute sex discrimination, sex-based harassment or retaliation for engaging in a protected activity.

Sanction. A consequence imposed by MCCC'D on a Respondent who is found to have violated this Regulation.

Student. Any individual who is currently admitted or registered in credit or non-credit college programs on a full or part time basis, or who participates in a college function (such as orientation, in anticipation of enrollment) or who was enrolled in the immediate previous term or is registered for a future term, including college employees so admitted, registered, or enrolled

Title IX Coordinator. At least one official designated by MCCC'D to ensure oversight of compliance with Title IX and MCCC'D's Title IX program. References to the TIXC throughout this Regulation may also encompass a designee for specific tasks.

9. Revision of this Regulation.

This Regulation succeeds previous regulations and procedures addressing sex discrimination, sex-based harassment, and/or retaliation, for incidents occurring before August 1, 2024. The Regulation will be reviewed and updated as needed by the TIXC, in consultation with any other stakeholders

deemed necessary and upon approval by the chancellor. MCCCCD reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

If government laws or regulations change, or court decisions alter, the requirements in a way that impacts this Regulation, this Regulation will be construed to comply with the most recent government regulations or holdings.

This Regulation is effective August 1, 2024.

BASED ON THE 2024 ATIXA TITLE IX MODEL POLICY AND PROCEDURES (AMPP).
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ADOPTED by Direct Approval from the Chancellor, July 31, 2024