



# **Sexual Misconduct Policy**

Last revised: September 2023

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Dear Student:

This policy book describes Monroe College's position, policies, and procedures regarding incidents of sexual misconduct. You are encouraged to read it in its entirety so that you know:

- How to respond in the event that you or a friend are subjected to sexual violence, including sexual assault, rape, stalking, domestic violence, dating violence, sexual harassment, unwanted sexual activity or contact, and other sexual misconduct;
- Your rights under federal and New York State laws;
- How to file a confidential or anonymous report of sexual misconduct;
- How to access resources and support services; and
- College policies and disciplinary procedures regarding incidents of sexual misconduct.

This policy book has been designed with you, the student, in mind. If anything written here is unclear or confusing, we encourage you to reach out to us by contacting:

David Dimond, Senior Vice President

[ddimond@monroecollege.edu](mailto:ddimond@monroecollege.edu) / 914-740-6436

or

Paula Green, Director of Public Safety

[pgreen@monroecollege.edu](mailto:pgreen@monroecollege.edu) / 914-740-6612

## Section 1: Statement of Purpose

Monroe College is committed to promoting a learning and working environment where all members of the college community feel safe and respected.

Acts of sexual misconduct are contrary to the College's educational mission and values, are harmful to others, and will not be tolerated by Monroe College. This policy prohibits sexual violence, sexual harassment, sexual misconduct, and other related offenses in all College programs and activities. Conduct prohibited by this policy may also violate federal and/or New York State laws enforced through the criminal justice system. Individuals are free to pursue action under this policy and through the criminal justice system simultaneously.

Monroe College takes seriously all reports of sexual misconduct and promises to promptly and fairly respond to all reports of misconduct in a manner intended to eliminate the misconduct, prevent its recurrence, and address its impact on affected individuals and the College community. All College proceedings conducted in regard to alleged violations of this policy will be done so in a timely and equitable process that provides adequate notice and a meaningful opportunity for all parties to be heard.

## Section 2: Scope of this Policy

This policy intends to address conduct prohibited under federal laws, including Title IX, the Clery Act, and the Violence Against Women Act, as well as under New York State law, specifically its "Enough Is Enough" law (Education Law 129-B).

This policy applies to all College community members, including students, faculty, staff, other employees, and independent contractors. Vendors, contractors, visitors, and others who conduct business with the College or on College property are likewise expected to comply with this policy. The prohibitions and protections in this policy apply regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction.

The prohibitions and protections in this policy apply regardless of whether the violation occurs on campus or off campus, except as set forth below. Members of the Monroe College community who commit acts of sexual misconduct will be disciplined appropriately and pursuant to College policy.

This policy book describes protections specifically for students who are subjected to sexual misconduct as well as disciplinary procedures specifically relevant to students who commit sexual misconduct.<sup>1</sup>

The actions the College is empowered to take against an individual who commits sexual misconduct may vary or be limited when that individual is not a member of the College community; however, whenever a member of the College community is subjected to sexual misconduct, regardless of the status of the individual who committed it, Monroe College will continue to provide support, resources, and protection to the affected community member. At all times, Monroe College will cooperate with and assist in law enforcement investigations whenever appropriate and requested to do so.

### Section 3: Terminology and Definitions

The following terms are used throughout this policy book and may be heard during conversations with College officials and/or during student conduct proceedings. Due to the sensitive and sometimes violent nature of incidents involving sexual misconduct, the following definitions are provided for informational use by students and for guidance in the investigation and processing of alleged violations. It is possible that a particular action may constitute sexual misconduct even if not specifically mentioned in these definitions.

If you have any questions about what these terms mean or whether they apply to certain situations, please feel free to talk to your campus Title IX Coordinator. Any questions about whether a specific incident violates New York State criminal laws should be addressed to law enforcement or to the district attorney.

**Affirmative Consent:** 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 the 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.

The following principles relating to affirmative consent apply on all campuses:

- Consent as a pre-requisite for any sexual engagement is called for by respect for

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<sup>1</sup> Allegations that a nonstudent (employee, vendor, contractor) engaged in conduct that constitutes Sexual Harassment Prohibited by Title IX will be processed using the Title IX Grievance Process set forth below. Allegations that nonstudents engaged in other types of sexual harassment or sexual misconduct will be addressed in accordance with the employee sexual harassment discrimination policy.

individual autonomy -- the right and ability to make decisions for oneself. In order to give Consent, a person must be of the legal age of consent, which is 17 in New York. Consent must be freely and actively given; it cannot be obtained by coercive use of force, threats or intimidation. Coercion, force, or threat of either invalidates consent. Consent to one form of sexual activity does not imply Consent to other forms of sexual activity, nor does past consent to intimacy imply Consent to future intimacy. Consent to engage in sexual activity with one person does not imply Consent to engage in sexual activity with another. Consent may initially be given but withdrawn at any time. When Consent is withdrawn or can no longer be given, sexual activity must stop.

- Individuals must be able to understand what they are doing in order to Consent to a sexual activity. A person who is incapacitated cannot give Consent because they lack the ability to knowingly choose to participate. Incapacitation may be caused by unconsciousness, being asleep, having a cognitive disability, being involuntarily restrained, the consumption of quantities of alcohol, drugs or other intoxicants or a variety of other circumstances. Consent is required regardless of whether a person initiating the act is under the influence of drugs and/or alcohol. Under this policy, "Yes" may not always mean "Yes" and "No" always means "No." Anything but a clear, knowing and voluntary Consent to any sexual activity is equivalent to a "No."
- In a nutshell: Sex is something you participate in, not something that happens to you!

**Appeal Officer:** An officer appointed by Monroe College's Title IX Coordinator to hear an appeal as outlined in this Policy.

**Business Days:** The days of operation for Monroe College: i.e., Monday – Friday, where classes are in session and/or administrative offices are open, except for designated College holidays.

**Monroe College Community:** The Employees, Students, Vendors, Contractors and Third Parties at all Monroe College campuses.

**Coercion:** When someone is compelled, through force, intimidation, or severe emotional manipulation, to act out of character or without regard for their own individual desire or volition. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get Consent from another. When someone makes it clear that they do not want sex, want to stop, or do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be considered coercive.

**Complainant:** Any Employee (Faculty or Staff), Non-employee Worker, Student, or Third

Party who makes a formal report or statement alleging conduct that is prohibited by this Policy.

**Complaint:** A statement including one or more allegations of Prohibited Conduct under this Policy.

**Dating Violence:** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party'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. Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

**Domestic Violence:** A felony or misdemeanor crime of violence committed against a victim by: a current or former spouse or intimate partner of the victim; a person with whom the victim shares a child in common; a person who is cohabiting with or has cohabited with the victim as a spouse or intimate partner; a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

**Education Program or Activity:** For purposes of determining whether conduct is within the definition of Sexual Harassment Prohibited by Title IX (as defined by the Department of Education), "education program or activity" includes conduct that occurs:

- On-campus.
- At any off-campus premises over which Monroe College exercise substantial control. This includes buildings or property owned or controlled by a recognized student organization.
- Within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of, Monroe College's programs and activities.

**Employee:** An individual employed by Monroe College. All full-time, part-time, or temporary employees fall under this class, including faculty, staff, and student workers.

**Faculty:** The teaching staff of Monroe College.

**Force:** The use of physical violence and/or imposing on someone physically to gain sexual

access.

**Gender-based harassment:** Unwelcome conduct of a non-sexual nature based upon a person's actual or perceived sex, including conduct based on gender identity, gender expression, and non-conformity with gender stereotypes.

**Hearing:** A formal meeting conducted by a Hearing Officer(s) to review the findings of an investigation and provide an opportunity for all parties to be heard. It is intended to be a non-adversarial review of the evidence identified in the investigation.

**Hearing Officer:** An individual appointed by Monroe College to preside over the Hearing of a reported case.

**Intimidation:** Unlawfully placing another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.

**Investigator:** An individual appointed by Monroe College to gather and document evidence through detailed and careful examination of all information presented using various means of discovery.

**Minor:** A person under the age of eighteen (18).

**Nonemployee Worker:** An individual who works on campus but is employed by an entity other than Monroe College, such as a vendor or contractor.

**Prohibited Behavior:** Any or all of the following (*see too* specific definitions): Dating Violence, Discrimination, Domestic Violence, Harassment, Retaliation, Sexual Assault, Sexual Assault-Nonconsensual Sexual Contact, Sexual Assault-Non-consensual Sexual Intercourse, Sexual Exploitation, Sexual Harassment, Sexual Harassment Prohibited by Title IX, Sexual Violence and Stalking.

**Quid Pro Quo:** Latin phrase meaning "this for that." In the Sexual Harassment context, it means an exchange of favors, for example, if a manager, faculty member, or other authority figure offers or suggests that they will give an individual a benefit in return for a sexual favor.

**Respondent:** Any Monroe College Student, Employee (Faculty member or staff) or Nonemployee Worker who has a formal Complaint filed against them; a person accused of Prohibited Conduct.

**Retaliation:** Taking adverse action against an individual for making a good faith report of prohibited behavior, for participating in any investigation or proceeding into such behavior,

and/or otherwise cooperating with the College's efforts to prevent and remediate sexual misconduct in its community, including but not limited to engaging in intimidation, threats, coercion, and/or adverse actions regarding education or employment.

- Retaliation does not exist where an individual pursues actions in good faith in response to a report of prohibited behavior, such as an accused individual offering evidence in his/her own defense.
- Retaliation may be committed by an accused individual, a reporting individual, or any other person or group of persons.
- Retaliation may exist even where an underlying report that was made in good faith was found to be unsubstantiated by evidence and/or the accused individual was determined to be "not responsible".

**Sexual Assault** is divided into the following two categories of behavior:

**Sexual Assault–Non-consensual Sexual Contact:** Behavior including any intentional touching of a sexual nature, however slight, whether clothed or unclothed, with any object or body part by a person against another person that is without Affirmative Consent and/or by force. Examples include, but are not limited to:

- Intentional contact with the breasts, buttocks, groin, or genitals;
- Intentional touching of another with breasts, buttocks, groin, or genitals;
- Compelling someone to touch another person or oneself in a sexual manner; and
- Any intentional bodily contact in a sexual manner.

**Sexual Assault–Non-consensual Sexual Intercourse:** Behavior including any sexual intercourse, however slight, with any object or body part by a person against another person that is without Affirmative Consent and/or by force. Examples include, but are not limited to:

- Vaginal penetration by a penis, object, tongue or finger;
- Anal penetration by a penis, object, tongue or finger; and
- Oral copulation (mouth-to-genital contact or genital-to-mouth contact).

**Sex discrimination and/or gender discrimination:** Treating an individual unfavorably or adversely based upon that individual's sex and/or gender in the context of educational or employment activities, programs, or benefits, such as in admissions, hiring, selection for

and/or participation in projects, teams, or events, provision of wages or benefits, selection for promotions, etc.

**Sexual Exploitation:** When an individual takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and the behavior does not otherwise constitute another type of conduct prohibited by this policy. Examples include, but are not limited to:

- Invasion of sexual privacy;
- Prostituting another person;
- Non-consensual taking and/or distributing photography, video, or audio-taping of sexual activity;
- Allowing others to observe sexual activities without Consent;
- Engaging in voyeurism;
- Knowingly transmitting a sexually transmitted infection or human immunodeficiency virus (HIV) to another person;
- Exposing one's genitals in non-consensual circumstances; and
- Inducing another to expose their genitals.

**Sexual Harassment:** Unwelcome, verbal or physical conduct that is based on sex/gender or is of a sexual nature and that subjects an individual to inferior terms, conditions or privileges of education or employment. Harassing conduct rises above the level of what a reasonable person of the same sex/gender would consider petty slights or trivial inconveniences. Sexual Harassment includes conduct that interferes with a student's ability to participate in or benefit from Monroe College's educational programs or activities and conduct that unreasonably interferes with a person's work performance or creates an intimidating, hostile or offensive work environment. The unwelcome behavior may be based on power differentials (*quid pro quo*) or create a hostile environment. Examples of sexual harassment include, but are not limited to:

- Attempting to coerce an unwilling person into a sexual relationship;
- Repeatedly subjecting a person to egregious, unwanted sexual attention;
- Punishing a refusal to comply with sexual advances;
- Conditioning a benefit on submitting to sexual advances;
- Unnecessary touching, or brushing against a person;
- Unwelcome communications of a sexual nature;
- Humor or jokes about sex including sexual innuendo;

- Sexist comments or jokes; and
- Verbal and/or physical aggression toward another based upon their status as transgender or a perception that the other fails to conform to stereotypical notions of expected characteristics for males or females.

**Sexual Harassment Prohibited by Title IX (as defined by the U.S. Department of Education):**

The following conduct constitutes Title IX Sexual Harassment when it occurs in the United States in an education program or activity of Monroe College:

1. an employee of Monroe College conditioning the provision of an aid, benefit, or service of Monroe College on an individual’s participation in unwelcome sexual conduct;
2. unwelcome sexual conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity; and
3. sexual assault, domestic violence, dating violence and/or stalking, as defined above.

**Sexual Misconduct:** Sexual misconduct is a broad term that encompasses a range of behaviors. Sexual misconduct can occur between people who know each other, people who have an established relationship, people who have engaged in consensual sexual activity before, and people who don’t know each other. Sexual misconduct can be committed by persons of any gender or gender identity, and it can occur between people of the same sex or different sex.

**Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress. Examples of stalking include, but are not limited to:

- Repeated, unwanted, intrusive, and frightening communications from the perpetrator by phone, mail, and/or email;
- Repeatedly leaving or sending the victim unwanted items, presents, or flowers;
- Following or lying in wait for the victim at places such as home, school, work, or recreation place;
- Making direct or indirect threats to harm the victim, their children, relatives, friends, or pets;
- Damaging or threatening to damage the victim's property;
- Harassing victim through the internet;
- Posting information or spreading rumors about the victim on the internet, in a public place, or by word of mouth; and

- Obtaining personal information about the victim by accessing public records, using internet search services, hiring private investigators, going through the victim's garbage, following the victim, contacting their friends, family, work, or neighbors, etc.

**Student:** An individual who is registered in a credit or degree program at Monroe College.

**Title IX Coordinators:** The Monroe College Title IX Coordinators for each campus are:

<b>Jamie Kopchynski</b>	Title IX Coordinator New Rochelle Campus	914-740-6773 <a href="mailto:jkopchynski@monroecollege.edu">jkopchynski@monroecollege.edu</a> Office of Student Services 434 Main Street New Rochelle, NY 10801
<b>Jeannette Slim</b>	Title IX Coordinator Bronx Campus	646-393-8457 <a href="mailto:jslim@monroecollege.edu">jslim@monroecollege.edu</a> Office of Student Services 2501 Jerome Avenue Bronx, NY 10468

- Each campus Title IX Coordinator is responsible for coordinating the College's prevention of and response to sexual harassment and sexual violence, as well as for addressing any questions or inquiries regarding how Monroe College applies federal Title IX law and regulations. The Title IX Coordinators also coordinate the College's response to acts of sexual misconduct as required by New York State's "Enough Is Enough" law (Education Law 129-B).
- The Title IX Coordinator has many responsibilities as part of his/her job of ensuring the College complies with the law. The Title IX Coordinator has the primary responsibility for:
  - Receiving complaints regarding sexual misconduct;
  - Providing information to students about resources and support services available;
  - Directing investigations into incidents of sexual misconduct;
  - Issuing interim protective measures and arranging requested accommodations;
  - Initiating student conduct charges against students who have committed sexual misconduct;

- Ensuring the student conduct process is handled the right way;
  - Overseeing student compliance with consequences and sanctions imposed through the student conduct process;
  - Collecting statistics regarding the prevalence of sexual misconduct on campus; and
  - Overseeing education and training programs relating to sexual misconduct.
- “Confidential Resources” are not required to notify the Title IX Coordinator when a student discloses an incident of sexual misconduct to them. Monroe College has one Confidential Resource with whom students can speak with confidentially. More information about confidentiality and the Confidential Resource is provided below and on the next page. The Title IX Coordinator will maintain student privacy to the greatest extent possible, but is not a Confidential Resource, given the nature of their duties.

Confidentiality

- Confidentiality can be offered by a College official who is not required by law to report known incidents of sexual assault or other crimes to the College’s Title IX Coordinator or any other College officials. Any conversation you have with a Confidential Resource will be kept completely confidential and will not be shared with anyone else without your permission, except in the very rare and extreme circumstance where someone’s safety is at risk.
- Monroe College has one College official who can offer complete confidentiality to persons who want to confidentially report an incident of sexual misconduct.
- The Monroe College Confidential Resource is:

<b>Dr. Kameil Douglas</b>	Dean of Student Services	914-740-6436 <a href="mailto:kdouglas@monroecollege.edu">kdouglas@monroecollege.edu</a> Office of Student Services 434 Main Street New Rochelle, NY 10801
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- Examples of other individuals who can offer confidentiality:
  - Medical providers
  - Lawyers providing legal advice

- Licensed mental health counselors, psychologists, and social workers
- Pastoral counselors (e.g., priests and other clergy members)
- Students can also disclose incidents to non-College officials, such as a local rape crisis center or a mental health counselor. A list of some local community resources is provided in **Section 6**. You can also find local rape crisis centers and other community resources by dialing 2-1-1 or 3-1-1, or by calling the New York State Domestic & Sexual Violence Hotline (1-800-942-6906). These types of non-College officials provide confidentiality and can offer support and referrals to helpful services and resources. These persons are not affiliated with the College and have no obligation to notify the Title IX Coordinator about the incident.

### Privacy

- Even College officials who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.

### Reporting Individual

- Reporting individual includes any person who is a victim, survivor, complainant, and other individuals who were subjected to sexual misconduct, and then report it.

### Bystander

- Bystander includes any person who witnesses or learns about sexual misconduct or another violation of this policy who is not themselves the victim or person subjected to the sexual misconduct.
- Bystanders are welcome and encouraged to report incidents of sexual misconduct that they have witnessed or learned about.
- If your friend is a victim of sexual misconduct, please encourage them to reach out for help. A list of on-campus and off-campus resources available to victims can be found on pages 20-21 and 23-25.

## Section 4: Prohibited Behavior

Monroe College is a place of academic learning, and its community members are expected to behave accordingly. The following behaviors are considered specific and serious violations of this policy. Violations of this policy can occur both on-campus and off-campus and may also include other unacceptable conduct not specifically listed below. Any possible or known violation of this policy may result in the college conducting an investigation; in certain instances, the College is obligated by federal and/or New York State law to conduct an investigation into these behaviors. Students believed to have committed prohibited behavior, including sexual misconduct, in violation of this policy may face student conduct charges, which can result in serious consequences, such as suspension or expulsion. For more information, see **Disciplinary Process for Students who Commit Sexual Misconduct** described in **Section 7** of this policy book.

### Prohibited Behavior:

- Sexual misconduct, including but not limited to:
  - Rape
  - Sexual assault
  - Sexual harassment
  - Stalking
  - Domestic violence
  - Dating violence
  - Gender-based harassment
  - Sex discrimination
  - Retaliation against someone who has made a complaint about sexual misconduct
  - Sexual exploitation
  - Sexual coercion
- Attempting to commit sexual misconduct
- Aiding another person in committing sexual misconduct
- Knowingly violating an interim measure or sanction imposed by the College pursuant to this policy, such as a 'no contact' order, interim removal, suspension, or other measures and/or sanctions deemed appropriate under the circumstances
- Knowingly filing a false report of any prohibited behavior

The above forms of sexual misconduct are defined in **Terminology and Definitions** in **Section 3** of this policy book.

## Section 5: How to Report Incidents of Sexual Misconduct

In any instance of sexual misconduct, a student has the right to report the incident Monroe College, to campus security, to local law enforcement, to the State police, to any combination of these authorities, or to not report the incident at all.

### Making a Formal Report Confidentially and/or Anonymously

The campus Title IX Coordinator is the person with whom a student would file a formal report regarding sexual misconduct, if the student wishes to do so. Formal reports can be made to the Title IX Coordinator by:

- Making a report to your campus Title IX Coordinator in-person, via email, or via the online incident report form. The Online Incident Report Form is accessible at:

<https://www.monroecollege.edu/info/title-ix-and-sexual-misconduct/online-incident-report-form>

- When a reporting individual formally reports an incident of sexual misconduct but expresses that he/she does not wish for the college to conduct an investigation, the College will typically honor that request. However, sometimes Monroe College will be obligated to weigh such a request against the College's duty to ensure the safety of others on campus.

Some of the factors the College may consider in weighing a request to not investigate may include: whether the accused individual has a history of violent behavior or is a repeat offender; whether the incident represents escalation in unlawful conduct by the accused individual; the increased risk that the accused individual will commit additional acts of violence; whether the accused individual used a weapon and/or force; whether the reporting individual is a minor; whether the institution possess other means to obtain evidence (e.g., security footage), and whether available information reveals a pattern of perpetration at a given location or by a particular group.

If Monroe College determines that it cannot maintain a victim's confidentiality and that an investigation is necessary, the student who reported the incident will be

notified in writing prior to the start of an investigation and the College will, to the extent possible, only share information with the people responsible for handling the College's response. Monroe College will remain ever mindful of the victim's well-being, and will take ongoing steps to protect the victim from retaliation or harm and will work with the victim to create a safety plan. Retaliation against the victim, whether by students or college employees, will not be tolerated.

- Anonymous reports can be made by submitting a report via Monroe College's online incident report form (accessible at: [www.monroecollege.edu/incident-reporting-form](http://www.monroecollege.edu/incident-reporting-form)) and not providing your name.

Online reports are submitted directly to the Title IX Coordinator. Your name and contact information is never seen unless you choose to provide it, and all reports are treated with the utmost privacy. You may provide as much or as little information as you are comfortable providing. Information that would be helpful to include in your report would be the name of the person who committed the sexual misconduct, the date it occurred, the facts of what happened, and any other information that might help us address the situation.

Important note regarding anonymous reports:

Individuals who wish to anonymously report an incident should be aware that their anonymity may inhibit Monroe College's ability to conduct a full investigation of the incident, provide support, and/or update the student regarding actions taken.

Regardless of how a student chooses to make a report, Monroe College may not require a victim to participate in any investigation or disciplinary proceeding.

### Disclosing to Someone Other than the Title IX Coordinator

Incidents can also be disclosed to Monroe College employees other than the Title IX Coordinator, if the student prefers to do so. Some College employees are required to notify the Title IX Coordinator when an incident of sexual misconduct is disclosed to them, in order to protect the safety of other people on campus and so that the Title IX Coordinator can reach out to the student to offer help, support, and information about filing a formal report if the student desires. While these College employees cannot offer true confidentiality, they promise not to disclose the information shared to anyone other than the Title IX Coordinator.

In the event that sexual misconduct has been committed by a non-member of the College community (including an unknown person or stranger), students may still report the incident to the College and receive support and protection. For a list of on-campus and off-campus

resources and support services near the Monroe College campuses, see **Resources, Support Services, and Protection for Victims**.

Students also have the option to make a report to law enforcement, either in addition to or as an alternative to making a report to the College. You can make a report to law enforcement by:

- Contacting the New York State Police at 1-844-845-7269
- Contacting local law enforcement near the Monroe College campuses
  - *New Rochelle campus*: New Rochelle Police Department at 914-654-2300
  - *Bronx campus*: NYPD 52<sup>nd</sup> Precinct, Domestic Violence Unit at 718-220-5857
- Contacting local law enforcement in your neighborhood
- Calling 911 (emergencies)

#### Amnesty Policy for Alcohol and/or Drug Use

Students should not be afraid to report an incident of sexual misconduct merely because they were drinking alcohol or using drugs at the time of the incident, whether they were a victim, witness, or bystander. Monroe College has adopted an amnesty policy for alcohol and/or drug use in regard to incidents of sexual misconduct.

The health and safety of every student at Monroe College is of utmost importance. Monroe 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. Monroe College strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to College 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 Monroe 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.

#### Disclosures During Advocacy Events

Individuals occasionally disclose information regarding sexual misconduct during a public awareness and/or advocacy event, such as candlelight vigils, protests, survivor speak-outs, Clothesline Project events, Take Back the Night events, Day of Unity events, and other similar

public events. These events typically serve the purpose of empowering survivors and raising awareness about issues related to sexual violence, as opposed to serving as a forum in which formal reports are made. Accordingly, the Monroe College is not obligated to begin an investigation based on information disclosed at these events, however any individual always remains free to file a report with the college if they choose to do so. The College may use information provided at such events to inform its efforts for additional education and prevention efforts regarding sexual misconduct and sexual violence.

### Campus Alerts

When certain crimes occur in certain areas on and/or near campus that represent a serious or continuing threat to the campus community, Monroe College is obligated under federal law to issue a timely warning in order to protect the safety of others. Crimes triggering a timely warning might include, for example, a rapist who is still present on campus. When a timely warning is issued, the warning will never identify any victims or reporting individuals.

### Campus Crime Data

When the Title IX Coordinator receives reports of sexual misconduct and certain other crimes that occur in certain locations on and/or near campus, federal and New York State laws require the Title IX Coordinator to count the number of those reports for inclusion in the College's annual security report. This is merely an anonymous tally – neither the identity of the reporting individual nor the specifics of the crime are included in the annual security report.

## **Section 6: Resources, Support Services, and Protections**

Monroe College is committed to supporting victims and survivors of sexual misconduct and sexual violence, regardless of when, where, or who committed the acts in question. The College is similarly committed to supporting students who have been accused of sexual misconduct, and **all** students of Monroe College are equally entitled to access appropriate resources, support services, and protections made available under this policy. In this section, the College has collected information and resources that may be helpful. If there are other resources that you or a friend might need, the College encourages you to reach out to your campus Title IX Coordinator, who can help obtain those resources. If you are in immediate danger at any point, call 911!

## Obtaining Immediate Medical Attention

If you have been the victim of rape, sexual assault, domestic violence, or dating violence and are in need of immediate medical attention, please call 911 and/or consider visiting a hospital, urgent care center, or medical provider. Below is a list of emergency medical facilities and other medical providers near the Monroe College campuses. New York State law requires that all hospitals in the State offer forensic rape examinations (sometimes also called 'forensic sexual assault examinations' or simply 'rape kits'). Hospitals must notify the victim/survivor that they can choose to have the forensic rape exam and its related charges billed to the NYS Office of Victim Services at no cost to the victim/survivor. After the exam, you might receive other medical services or counseling services for which the hospital might charge you or bill your health insurance; if your insurance plan is through someone else (such as your parent), you are encouraged to tell hospital staff if you do not want your insurance policyholder to be notified about your access to these services.

Especially in incidents of rape or sexual assault, it may be important to receive a forensic examination as soon as possible in order to preserve evidence and/or to receive protection from sexually transmitted infections and pregnancy.

To best preserve evidence, you should avoid showering, washing, changing clothes, discarding clothes, combing hair, or otherwise altering your physical appearance until the exam is complete, and you should seek an exam as soon as possible. Most medical professionals recommend receiving emergency HIV-prevention medication within 36 hours (1.5 days), a forensic exam within 96 hours (4 days), and emergency contraception (sometimes called "the morning-after pill") within 120 hours (5 days) of being raped or sexually assaulted. Even if you do not want evidence to be collected, it is still recommended that you get examined by a doctor in order to address physical injuries, potential pregnancy, and possible exposure to sexually transmitted infections. For more information about what to do after an assault, please call the NYS Sexual Violence Hotline at 1-800-942-6906 (available 24/7/365) to be connected to your local rape crisis center or visit the National Sexual Violence Resource Center website at [www.nsvrc.org](http://www.nsvrc.org).

## Medical Facilities near Monroe College

### New Rochelle campus

#### **Montefiore New Rochelle Hospital**

16 Guion Place, New Rochelle, NY 10802

914-365-3700

#### **Montefiore Mount Vernon Hospital**

12 North 7<sup>th</sup> Avenue, Mount Vernon, NY 10550

914-361-6100

#### **New York-Presbyterian Lawrence Hospital**

55 Palmer Avenue, Bronxville, NY 10708

914-787-1000

#### **Westchester Medical Center**

100 Woods Road, Valhalla, NY 10595

866-468-6962

**Bronx campus**

**New York-Presbyterian Hospital Allen Pavilion**

5141 Broadway, New York, NY 10034  
212-305-3710

**Saint Barnabas Hospital**

4422 Third Avenue, Bronx, NY 10457  
718-960-6100

**North Central Bronx Hospital**

3424 Kossuth Avenue, Bronx, NY 10467  
718-519-3500

**Montefiore Medical Center Moses Division**

111 East 210<sup>th</sup> Street, Bronx, NY 10467  
718-920-2001

More information regarding forensic examinations and sexually transmitted infections, as well as other resources available through the New York State Office of Victim Services, by talking to your campus Title IX Coordinator, or by contacting the New York State Office of Victim Services directly at 1-800-247-8035 or <https://ovs.ny.gov/contact-us>.

### On-Campus and Off-Campus Resources and Support Services

Individuals who have been subjected to sexual misconduct also often need other types of support. Even if you think you are okay and that you do not need help, the College encourages you to reach out to someone. Monroe College offers on-campus resources that may benefit you. Students may use on-campus resources at either campus, even if they normally attend classes at a different campus. In addition, there are various off-campus resources that you can use if you prefer not to seek help from on-campus resources. Below is a list of on-campus and off-campus resources near the Monroe College campuses, including counselors, advocates, and community resources. More resources are also listed on Monroe College's website: <https://www.monroecollege.edu/info/title-ix-and-sexual-misconduct/resources-and-services>

If you have any questions or aren't sure where to go, your campus Title IX Coordinator can help point you in the right direction.

## On-Campus Resources

### **Title IX Coordinators**

See pages 11-12 of this policy for more information about your campus Title IX Coordinator and the help they can provide.

### **Campus Public Safety**

Available 24/7 at New Rochelle campus and during campus hours at Bronx campus.

### **Counseling Services**

Staff mental health counselor at New Rochelle campus offering therapy, workshops, group sessions, and referrals to off-campus counseling services.

### **Student Services Office**

Offers academic advising, career services, mentoring, academic accommodations, class schedule changes, and other services.

### **Student Health & Wellness Office**

Offering health education, condom distribution, STD tests, info about health insurance, and referrals to off-campus health & wellness services, including mental health, sexual health, immunizations, and substance abuse services.

### **Confidential Resource**

See page 12 of this policy for more information about Monroe College's Confidential Resource and the help they can provide.

## Off-Campus Resources

### **New Rochelle Campus**

#### **My Sister's Place**

1 Water Street, White Plains, NY 10601 [www.mspny.org](http://www.mspny.org)

Crisis Hotline: 1-800-298-7233

Provides confidential emergency shelter, safety planning, counseling services, legal services, child care services, pet shelter, and support and referrals to many other services and resources for victims and survivors of domestic abuse, sexual assault, and human trafficking.

**Westchester County District Attorney – Victim’s Justice Center**

111 Dr. Martin Luther King Jr. Blvd., White Plains, NY 10601  
914-995-3300

Provides resources and support to survivors of sexual assault, domestic violence, and stalking, including confidential counseling services, crisis intervention, information about and assistance with the court process, financial assistance, and referrals for other services.

Also see Westchester D.A.’s Crime Victim’s Rights booklet:

[http://www.westchesterda.net/images/stories/pdfs/OVSRights\\_2011.pdf](http://www.westchesterda.net/images/stories/pdfs/OVSRights_2011.pdf)

**Westchester Hispanic Coalition**

46 Waller Avenue, White Plains, NY 10605  
Hotline (24/7): 1-844-926-6627 (bilingual English/Spanish)

Provides confidential counseling and advocacy services for victims of sexual assault and domestic violence, including crisis intervention, emotional support, accompaniment to forensic exams and court proceedings, legal services, and referrals for other important services.

Also provides specialized legal services for family issues (such as orders of protection, divorce, and custody) and immigration issues.

**BRONX CAMPUS**

**Safe Horizon @ BronxWorks / McLaughlin Community Center**

80 East 181<sup>st</sup> Street, Basement Level, Bronx, NY 10456  
Helpline: 1-855-234-1042

Visit [www.safehorizon.org/find-us](http://www.safehorizon.org/find-us) to see other locations in the Bronx and the rest of NYC Provides confidential crisis counseling, safety planning, assistance finding shelter, referrals to legal services, and information about other important resources.

**New York City Alliance Against Sexual Assault**

[www.svfreenyc.org](http://www.svfreenyc.org) Hotline: 212-514-7233

Provides resources and support to survivors of sexual assault, including confidential counseling services, advocacy services, and referrals.

**NYC Anti-Violence Project**

116 Nassau Street, 3<sup>rd</sup> Floor, New York, NY 10038

Hotline (24/7): 212-714-1141

Provides services to LGBTQ and HIV-affected survivors of all forms of violence, including intimate partner violence, sexual violence, and hate violence, including counseling services, advocacy services, legal services, and more.

**Bronx County District Attorney – Domestic Violence Unit**

198 E. 161<sup>st</sup> Street, Bronx, NY 10451

718-838-7280

Provides criminal investigation and protection services for victims and survivors of sexual assault and intimate partner violence, including domestic abuse. Also provides crisis intervention and counseling services, advocacy services, and other support and assistance to victims, survivors, and their family members.

These are only a brief listing of the resources available to you. You can find many more resources by dialing 2-1-1 or 3-1-1 for free, confidential help finding an extensive list of resources, including law enforcement & public safety assistance, legal services, hospitals that conduct sexual assault forensic exams, confidential counseling services, and more. 2-1-1 and 3-1-1 are available 24/7, and many of the resources to which they can refer you also are available 24/7, are confidential, and are low-cost or free of charge.

## **A. INVESTIGATION AND ADJUDICATION PROCEDURES FOR COMPLAINTS OF SEXUAL HARASSMENT PROHIBITED BY TITLE IX (“Title IX Grievance Process”)**

In May 2020, the United States Department of Education promulgated new regulations governing Title IX. These regulations, which went into effect on August 14, 2020, mandate that Monroe College adopt a specific definition of Title IX Sexual Harassment and a grievance process with respect to such conduct, as specified in the regulations.

The definition of Sexual Harassment Prohibited by Title IX is narrower than the definition of sexual harassment under College policy and under other federal and state laws. Accordingly, conduct that does not meet the definition of Sexual Harassment Prohibited by Title IX may still violate this Policy.

If a determination is made at any stage of the process that the alleged conduct does not meet the substantive or jurisdictional definition of Sexual Harassment Prohibited by Title IX and the complaint is dismissed from this Title IX procedure, the allegations may be investigated and adjudicated under the Investigation and Adjudication Procedures for Prohibited Conduct Other than Title IX Sexual Harassment set forth below. In cases where allegations involving the same parties may constitute Sexual Harassment Prohibited by Title IX and other types of Prohibited Conduct, Monroe College, at its discretion, may investigate and/or adjudicate those matters together under this procedure or separately with the non-Title IX Prohibited Conduct addressed under the procedure for other types of Prohibited Conduct.

### **1. Supportive Measures**

Supportive measures are neither disciplinary, nor punitive. They are intended to provide support and facilitate access to Monroe College’s education program and activity. Complainants who report allegations that could constitute Sexual Harassment Prohibited by Title IX are entitled to receive supportive measures from Monroe College regardless of whether they choose to file a formal complaint. These supportive measures may include, as appropriate:

- counseling
- extensions of deadlines or other course-related adjustments
- modifications of work or class schedules
- campus escort services
- restrictions on contact between the parties (no contact orders)
- changes in work or housing locations

- leaves of absence
- increased security and monitoring of certain areas of the campus

*Request for Review and Modification:* Student Complainants and Respondents may request review and modification of any supportive measure(s) that directly impacts them, including review of the need for and terms of the measure(s), by submitting a request in writing to the Title IX Coordinator along with any evidence they wish to present. In the event the measure impacts the other party, they will be given an opportunity to state their position and present evidence as appropriate. The Title IX Coordinator or designee will review the submissions and make a determination.

Because Monroe College is under a continuing obligation to address the issue of Sexual Violence campus-wide, reports of Sexual Violence (including non-identifying reports) will also prompt Monroe College to consider broader remedial action – such as increased monitoring, supervision or security at locations where the reported sexual violence occurred; increasing education and prevention efforts, including to targeted population groups; conducting climate assessments/victimization surveys; and/or revisiting its policies and practices.

## **2. Removal of Respondent from Monroe College Community**

### **a. Emergency Removal of Student-Respondent**

Monroe College may remove a student-respondent from Monroe College's program or activity on an emergency basis, where Monroe College determines, after an individualized analysis, that the individual poses an immediate threat to the physical health or safety of any student or other individual arising out of the allegations of Title IX Sexual Harassment, justifying removal.

If Monroe College determines such removal is necessary, the respondent will be provided notice and an opportunity to request review and modification of the decision immediately following the removal, as set forth above.

### **b. Administrative Leave**

Monroe College may place a non-student employee respondent on administrative leave during the Title IX Grievance Process.

### **3. Formal Complaint**

For the purposes of this Title IX Grievance Process, “formal complaint” means a document – including an electronic submission - filed by a complainant with a signature or other indication that the complainant is the person filing the formal complaint, or signed by the Title IX Coordinator, alleging sexual harassment prohibited by Title IX against a Respondent about conduct within Monroe College’s education program or activity and requesting initiation of the procedures consistent with the Title IX Grievance Policy to investigate the allegation of sexual harassment.

To file a Formal Complaint, a complainant must provide the Title IX Coordinator a written complaint describing the facts alleged. Complainants are only able to file a Title IX Formal Complaint if they are currently participating in, or attempting to participate in, the education programs or activities of Monroe College, including as an employee. The College reserves the right, at its sole discretion, to utilize the Investigation and Adjudication Procedures for Prohibited Behavior Other than Title IX Sexual Harassment to address complaints from complainants who are not currently participating or attempting to participate in the education programs or activities of Monroe College.

The Title IX Coordinator may determine a Formal Complaint is necessary even if the complainant chooses not to file the complaint, in which case Monroe College will inform the Complainant of this decision in writing, and the Complainant need not participate in the process further but will receive all notices issued pursuant to these procedures. The factors considered when determining whether the Title IX Coordinator will file a Formal Complaint without the cooperation of the Complainant may be found above.

### **4. Assessing Title IX Jurisdiction & Dismissal**

#### **a. Mandatory Dismissal**

The Title IX Coordinator or his designee will review the formal complaint to determine whether the jurisdiction is appropriate under the Title IX procedure. In so doing, the Title IX Coordinator will assess whether:

1. The conduct is alleged to have occurred in the United States;
2. The conduct is alleged to have occurred in Monroe College’s education program or activity; and

3. If proven, the alleged conduct would constitute Sexual Harassment Prohibited by Title IX as defined by the Department of Education.

If all of the elements are met, Monroe College will investigate the allegations in accordance with the Title IX procedure. If all of the elements are not met, then the Title IX Coordinator must issue a Notice of Dismissal from the Title IX procedure. The Notice of Dismissal will be sent to the Complainant(s) and Respondent(s) either simultaneously with or after the Notice of Allegations.

**b. Discretionary Dismissal**

The Title IX Coordinator may dismiss a formal complaint or any allegations therein at any time if:

1. The complainant notifies the Title IX Coordinator in writing of a desire to withdraw the allegations;
2. The respondent is no longer enrolled as a student or employed by Monroe College;
3. The institution determines in its discretion that it will be unable to gather evidence sufficient to reach a determination due to specific circumstances outside the control of the parties or Monroe College.

Each party will have an opportunity to appeal a dismissal determination in accordance with the procedure listed under Title IX Appeals below.

If a complaint is dismissed from the Title IX procedure, the Title IX Coordinator may refer the complaint to be addressed under the Investigation and Adjudication Procedures for Prohibited Conduct Other than Title IX Sexual Harassment.

## 5. Consolidation of Complaints

The Title IX Coordinator or designee may consolidate multiple cases and/or incidents to resolve as a single case through the formal resolution process when the cases arise out of the same set of facts and circumstances, including situations where:

- There are allegations from multiple complainants against the same respondent;
- There are allegations from the same complainant against multiple respondents that arise out of the same set of facts and circumstances;
- The respondent has filed a complaint against the complainant.

## 6. Notice of Allegations

The Title IX Coordinator will draft and provide the Notice of Allegations to the Complainant(s) and Respondent(s) as soon as practicable after receiving a Formal Complaint of the allegations, absent extenuating circumstances. The notifications will be sent to the parties' institutional email accounts if they are students or employees or by other reasonable means if they are neither students nor employees.

The institution will provide sufficient time for the parties to review the Notice of Allegations and prepare a response before any initial interview.

### a. Contents of Notice

The Notice of Allegations will include the following:

- Notice of Monroe College's Title IX Grievance Procedure and a hyperlink to a copy of the process.
- Notice of the allegations potentially constituting covered sexual harassment, including sufficient details known at the time the Notice is issued, such as the identities of the parties involved in the incident, if known, including the complainant; the conduct allegedly constituting Title IX sexual harassment; and the date and location of the alleged incident, if known.
- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.

- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney.
- A statement that before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the institution does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source.
- A statement that Monroe College prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

**b. Updated Notice**

In some instances, additional allegations may arise during the course of the investigation that were not known at the time the Notice of Allegations was issued. In the event that occurs, Monroe College may elect to add those allegations to the existing investigation. If so, the institution will notify the parties of the additional allegations by their institutional email accounts or other reasonable means.

The parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional charges.

**7. Notice of Meetings and Interviews**

Monroe College will provide written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party expected to attend, with sufficient time for the party to prepare to participate.

**8. Advisors of Choice**

The Parties may each be accompanied during any meeting, interview, or hearing by a single advisor of their choice, who may be an attorney. Other than at the hearing, advisors may speak privately to their advisee during any such meeting or proceeding but may not present evidence or otherwise participate in the interview or meeting.

During a Hearing, the advisor will be permitted to cross-examine witnesses and address the Hearing Officer in connection with that cross-examination but will not otherwise be permitted to address the Hearing Officer. A party may request a brief recess to consult with their advisor, which may be granted at the discretion of the Investigator or Hearing Officer. An advisor who is disruptive and fails to comply with the participation boundaries may be removed from any meeting, interview or hearing and may be barred from future meetings, interviews or hearing in the matter.

Provided that the Advisors act reasonably in providing available dates and work collegially to find dates and times that meet all schedules, Monroe College will engage in best efforts to accommodate the advisors' schedules. The determination of what is reasonable shall be made by the Title IX Coordinator or designee. Monroe College will not be obligated to delay a meeting or hearing under this process more than five (5) days due to the unavailability of an Advisor of Choice, and may offer the party the opportunity to obtain a different Advisor of Choice or utilize one provided by Monroe College.

## **9. Voluntary Informal Resolution**

In certain circumstances, it may be possible for a formal complaint to be resolved through informal resolution. Monroe College offers a mediated resolution option for parties, in which the Title IX Coordinator will appoint a mediator, who will suggest a resolution to the parties, which they may accept or reject. Monroe College reserves the right to determine that informal resolution is not appropriate in any given circumstance. Informal resolution is not available for cases involving an allegation that an employee sexually harassed a student.

Prior to beginning the informal resolution process, the parties must voluntarily provide written consent to participate, acknowledging that: (1) once a resolution is agreed upon, the parties will be precluded from resuming a formal complaint arising from the same allegations, absent exceptional circumstances; (2) at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint; and (3) any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

Monroe College will not compel any party to engage in mediation or require the parties to have direct contact with one another. Participation in the informal resolution procedure is voluntary, and either party can request to discontinue the

informal resolution process at any time. Once a resolution is mutually agreed upon, the complaint will be deemed resolved.

The Title IX Coordinator will maintain records of all reports and conduct referred for informal resolution. Records relating to informal resolutions may also be placed in the personnel files of employee complainants and respondents. Statements made by either party during the course of the informal resolution process are considered confidential and inadmissible in any investigation or hearing, regardless of the outcome of the informal resolution process.

## **10. Process Free from Bias or Conflict of Interest**

Both the Complainant and the Respondent have the right to have a fair and impartial investigation, determination and appeal. If either party has any reason to believe that the Investigator, the Title IX Coordinator, or any of the Hearing or Appeals Officers has a conflict of interest or would otherwise be unable to be fair and impartial, the concerned party should submit a letter explaining the basis for their concern.

- Regarding the Investigator, Appeal Officer, or Hearing Officer, to the Title IX Coordinator; and
- Regarding the Title IX Coordinator to David Dimond.

The other party will be provided with a copy of the letter and will have an opportunity to respond. Based upon those submissions and any independent inquiry the decision-maker may choose to make, if it is determined that a conflict of interest exists, another individual will be appointed to take on the role of the conflicted person. If it is found that no conflict of interest exists, the individual will continue in their role. Concerns regarding conflicts of interest should be raised as soon as they are identified and whenever possible before the allegedly conflicted person renders a determination, for example, prior to the submission of the investigative report, the Hearing Officer's determination, or the appeal decision.

## **11. Investigation**

The Title IX Coordinator working with the appropriate Monroe College office will assign an Investigator. The Investigator will direct the investigative process and confer with the Title IX Coordinator as appropriate. The investigation will be prompt, thorough, and impartial.

There will be no Retaliation against any individual for filing a Complaint and/or for assisting, testifying, or participating in the investigation of a Complaint.

All Complaints will be kept private and disclosed only to the extent necessary for a thorough investigation.

Each party will have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, (i.e. evidence that tends to prove and disprove the allegations) as described below.

The Investigator will take the following steps:

- Thoroughly review the Complaint and all supporting documentation and evidence.
- Interview both the Complainant(s) and the Respondent(s).
- Give both parties the opportunity to identify witnesses and provide relevant documentary and physical evidence. (This may include, but is not limited to, texts, emails, photos, social media posts, voicemail messages, etc.)
- The Investigator will contact witnesses who may have relevant information and engage in good faith efforts to meet with the witnesses. If a witness is not cooperative, the Investigator will not unreasonably delay the investigation.
- The Investigator has the discretion to identify and interview witnesses who were not identified by any party.
- The Investigator has the discretion not to interview a suggested witness where none of information the party indicates that the witness can share would be relevant in the Investigator's judgment.
- Exclude from consideration information about the romantic or sexual history of either the Complainant or the Respondent, except as to prove that someone other than the respondent committed the conduct alleged by the complainant or with respect to the parties shared sexual history when offered to prove consent. If either party offers such information, the other will have the right to respond.
- Exclude from consideration medical records and information, including mental health history or treatment, absent a waiver from the individual who is the subject of the medical record.
- Exclude from consideration information protected under a legally recognized privilege such as the attorney-client privilege unless the person holding such privilege has waived the privilege.

**a. Parties' Review of Investigative Materials**

Once the investigation has concluded, the Investigator, in conjunction with the Title IX Coordinator or designee, shall gather all evidence that is directly related to the allegations. Unless otherwise prohibited by law, the Title IX Coordinator or designee shall make electronic copies of the evidence available to the parties and their advisors. Given the confidential nature of the materials and proceeding, the parties and their advisors will be required to sign a non-disclosure agreement not to disseminate any of the evidence subject to inspection and review and not to use the evidence for any purpose other than the Title IX Grievance Process. Any violation of the non-disclosure agreement may result in additional misconduct charges against a party, a report to an attorney's professional licensing board, or other legal action.

The parties may then review the information gathered. Both will have an opportunity to respond in writing to this information within [seven] business days.

**b. Investigative Report**

The Investigator will consider the parties' responses in completing the final investigative report, which will compile all relevant evidence. The report will be provided to the parties no later than ten business days before any hearing on the formal complaint and before any pre-hearing meeting. The final investigative report will be redacted for information that is irrelevant or privileged. Unless otherwise prohibited by law, the Title IX Coordinator or designee shall make electronic copies of the evidence available to the parties and their advisors. The parties shall have the opportunity to provide any written response to the investigative report to the Title IX Coordinator within five business days of receipt. The parties may request to review the other party's written response statements once they have been submitted.

If at any stage following the submission of the parties' responses new evidence directly related to the allegations is gathered, it will be shared with the parties and their advisors in line with the parameters set forth above. The parties will have an opportunity to submit an additional written response within a time frame determined by the Title IX Coordinator or designee. The parties may request to review the other party's written response statements once they have been submitted, but

they will not be permitted to submit any further written response.

**c. When Parties Decline to Participate**

If the Complainant or the Respondent chooses not to cooperate in the investigation, the Investigator will still complete the investigation and prepare a formal report based solely upon the information available. No adverse inference will be made as a result of a Complainant or Respondent's decision not to participate in the investigation.

If the Complainant chooses to withdraw the Complaint prior to the completion of the investigation, the Title IX Coordinator or designee will determine whether to continue to pursue the Complaint considering the factors outlined above.

**12. Hearing**

Prior to taking any disciplinary action with respect to Title IX Sexual Harassment, Monroe College will hold a live hearing. The parties cannot waive the right to a live hearing. The live hearing may be conducted with all parties physically present in the same physical location, or, at the Title IX Coordinator's discretion, any or all parties, witnesses, and/or other participants may appear at the live hearing virtually through a remote conferencing platform. This technology will enable participants simultaneously to see and hear each other. In the event of technological difficulties outside the parties' control, Monroe College may delay or adjourn a hearing. Any party who wishes to participate remotely may submit such a request to the Title IX Coordinator with an explanation for the request.

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

The hearing will be recorded through audio recording. That recording or transcript will be made available to the parties for inspection and review, provided that they and their advisors have signed a non-disclosure agreement not to disseminate the hearing [recording/transcript] or use it for any purpose other than the Title IX grievance process. Any violation of the non-disclosure agreement may result in additional misconduct charges against a party, a report to an attorney's professional

licensing board, or other legal action.

The deliberations of the Hearing Officer(s) will not be recorded.

**a. Evidence Not Previously Disclosed**

As a general rule, no new evidence or witnesses may be submitted during the live hearing.

If a party identifies new evidence or witnesses that were not reasonably available prior to the live hearing and could affect the outcome of the matter, the party may request that such evidence or witnesses be considered at the live hearing.

The Hearing Officer(s) will consider this request and determine (1) whether such evidence or witness testimony was actually unavailable by reasonable effort prior to the hearing and (2) whether such evidence or witness testimony could affect the outcome of the matter. The party offering the newly-discovered evidence or witness has the burden of meeting this burden by the preponderance of the evidence.

If the Hearing Officer determines that this standard is met, then the parties will be granted a reasonable period of time to review the evidence or prepare for questioning of the witness.

**b. Who can attend the Hearing?**

The Hearing is a private proceeding, and only the following individuals are permitted to participate:

- Complaint(s) and advisor(s)
- Respondent(s) and advisor(s)
- Hearing Officer(s)
- Title IX Coordinator or designee
- Witnesses (only while they are being questioned)
- College employees needed to provide technological support/assistance.
- Stenographer (if the hearing is being transcribed)

### **c. Hearing Procedures**

For all live hearings conducted under this Title IX Grievance Process, the procedure will be as follows:

- The Hearing Officer(s) will begin the hearing by establishing the rules and expectations for the hearing;
- Each party will have an opportunity to give an opening statement. The statement will be presented by the party, not the party's advisor;
- The Hearing Officer(s) will ask questions of the Parties;
- After the Hearing Officer(s) questions a party, the other party's advisor will have an opportunity to cross-examine;
- The Hearing Officer will ask questions of each witness;
- After the Hearing Officer questions each witness, the parties' advisors will be given the opportunity to cross-examine that witness. The advisor of the party who suggested the witness will cross-examine that witness last.
- The Hearing Officer will have the authority to stop the proceedings at any time, including to ask additional follow-up questions during cross-examination, to enforce the rules of decorum, or for any other reason.
- Should a Party or the Party's Advisor choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the Hearing Officer(s).
- Monroe College will not threaten, coerce, intimidate or discriminate against any party in an attempt to secure the party's participation.
- The decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross examination or other questions.
- Prior to the conclusion of the hearing, the parties may each make an impact statement.

### **d. The Hearing Officer(s)**

- All Hearing Officers have received training on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for complainants, and any technology to be used at the hearing.

- The Hearing Officer(s) will not have any bias for or against either party or any other conflict of interest.
- Neither the Title IX Coordinator, the Investigator, nor any parties' advisor can serve as a Hearing Officer.

**e. Advisor of Choice**

- The parties have the right to select an advisor of their choice, who may be, but does not have to be, an attorney.
- The parties are not permitted to conduct cross-examination; it must be conducted by the advisor. As a result, if a party does not select an advisor, the institution will select an advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party.
- The advisor is 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 may appear and conduct cross-examination on their behalf.
- If neither a party nor their advisor appear at the hearing, Monroe College will provide an advisor to appear on behalf of the non-appearing party.

**f. Live Cross-Examination**

Each party's advisor will conduct live cross-examination of the other party or parties and witnesses. During this live-cross examination the advisor will ask the other party or parties and witnesses relevant questions and follow-up questions, including those challenging credibility directly, orally, and in real time.

Before any cross-examination question is answered, the Hearing Officer will determine if the question is relevant. Cross-examination questions that are duplicative of those already asked, including by Hearing Officer(s) may be deemed irrelevant if they have been asked and answered.

The Hearing Officers may ask, but cannot require, the parties to submit questions for witnesses in advance of the hearing.

## **g. Review of Hearing [Transcript/Recording]**

The [recording/transcript] of the hearing will be available for review by the parties within [7] business days, unless there are any extenuating circumstances. The [recording/transcript] of the hearing will not be provided to parties or advisors of choice.

## **h. Determination Regarding Responsibility**

### **1. Standard of Proof**

Monroe College uses the preponderance of the evidence standard. This means that the Hearing Officer assesses whether it is more likely than not that a violation of the Policy occurred.

### **2. General Considerations for Evaluating Testimony and Evidence**

While the opportunity for cross-examination is required in all Title IX hearings, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the Decision-maker.

Decision-makers shall not draw inferences regarding a party or witness's credibility based on the party or witness's 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.

The weight given to any evidence will not vary based upon whether it is inculpatory or exculpatory (i.e. tending to prove or disprove the allegations).

Unless barred by the cross-examination requirements, a witness's testimony regarding indirect knowledge of the facts at issue will be considered, but will generally be accorded less weight than testimony regarding direct knowledge of specific facts that occurred.

Title IX regulations require that Monroe College allow parties to call “expert witnesses” for direct and cross examination. Monroe College does not provide for expert witnesses in other proceedings. While the expert witness will be allowed to testify and be cross-examined, the Hearing Officer will afford greater weight to the testimony of fact witnesses than to the non-factual testimony of the expert or to the expert’s testimony that is not directed to the specific facts of the case.

Where a party or witness’s conduct or statements demonstrate that the party or witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the Hearing Officer may draw an adverse inference as to that party or witness’s credibility.

### **3. Contents of Hearing Determination**

The Hearing Officer(s) will issue a written determination simultaneously to all parties through their institutional email account, or other reasonable means as necessary. Absent extenuating circumstances, the Determination will be issued within ten business days of the completion of the Hearing. The Determination will include:

1. A recitation of the allegations potentially constituting Title IX Sexual Harassment;
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding which provisions of this policy, if any, the respondent has or has not violated.
5. For each allegation:
  - a. A statement of, and rationale for, a determination regarding responsibility;
  - b. A statement of, and rationale for, any disciplinary sanctions being imposed on the respondent; and
  - c. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to Monroe College’s

education program or activity will be provided to the complainant; and

6. The procedures and permitted grounds for the complainant and respondent to appeal (described below in "Appeal").

#### **i. Appeal**

If a Respondent or Complainant does not accept the findings of the Hearing Officer(s), the party may request an appeal through the following procedures. The request for appeal must be submitted within five (5) Business Days of receipt of the Hearing Officer's decision.

Appeals are not intended to be full re-hearings or the basis for a new investigation of the Complaint. The Appeals Panel may accept or modify the original decision. Appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal. The Appeal Panel's decision to deny a requested outcome on appeal is final.

The ONLY grounds for appeal are as follows:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal that could have affected the outcome of the matter;

The Title IX Coordinator, Investigator(s), or Hearing Officer(s) had a conflict of interest or bias for or against an individual party.

Any party who files an appeal must do so in writing to the Title IX Coordinator. The request for appeal will then be forwarded to an appointed Appeals Panel of three for review. The non-appealing party will be given an opportunity to review the written appeal and submit a written response not to exceed ten (10) pages within five (5) business days. The Appeal Panel's determination need not be unanimous but, at least two of the panel members must agree on the outcome.

If the Appeals Panel determines that a procedural error occurred, they may return the original Complaint to the Hearing Officer with instructions to

reconvene to remedy the error. The results of a reconvened hearing cannot be appealed.

In rare cases, where the error cannot be remedied by the original Hearing Officer(s) (as in cases of bias), the Appeals Panel may order a new Hearing with a new Hearing Officer(s) appointed by the Title IX Coordinator as appropriate. The results of a new hearing with a new Hearing Officer(s) can be appealed once on the grounds for appeal listed above.

The Appeals Panel may in their discretion suspend any sanctions imposed by the Hearing Officer during the pendency of the appeal and/or any new Hearing of the original Complaint.

The Appeals Panel will render a written decision on the appeal to all parties within twenty-one (21) Business Days from receipt of the request for appeal. The decision on appeal, which will include the rationale for the decision, will be delivered to the parties simultaneously via their institutional email account or other reasonable means.

In cases of Sexual Assault, Domestic Violence, Dating Violence or Stalking, if neither party submits a written appeal within five (5) Business Days of receipt of the Hearing Officer's decisions, the Title IX Coordinator, as appropriate, will provide the parties with written notification that the Hearing Officer's decision is final. In cases involving all other kinds of alleged Title IX Sexual Harassment, the decision will be deemed final upon expiration of the period of time to appeal and no written notice will be provided.

## **B. INVESTIGATION AND ADJUDICATION PROCEDURES FOR SEXUAL MISCONDUCT CONDUCT OTHER THAN TITLE IX SEXUAL HARASSMENT WHERE RESPONDENT IS A STUDENT.**

### **1. Supportive Measures, Protections, and Campus Accommodations**

Monroe College is prepared to offer you certain supportive measures, protections, and reasonable campus accommodations.

Below is a list of protections and campus accommodations that may be available, if appropriate. To request any of the below measures, protections, and/or accommodations, please contact your campus Title IX Coordinator. The Title IX Coordinator will then make the necessary arrangements, including coordinating with other campus offices as needed, in order to maintain your privacy. Upon request, both the accused and the reporting individual will have the opportunity to provide their perspective on the need for any interim measure or accommodation that affects him/her, the terms of such measure or accommodation, and the potential for modifying such measure or accommodation, and will be allowed to submit evidence in support of their view.

- Having the College issue a 'no contact' order against the accused individual
  - A 'no contact' order requires the accused to leave a public place where both the accused and the reporting individual are present. The accused is not allowed to contact or speak with the reporting individual. If necessary, the College may establish a schedule for the accused and the reporting individual to access College buildings and property at separate times. Violating the 'no contact' order could subject the accused to additional consequences and/or the involvement of law enforcement.
  - Upon request, both the accused and the reporting individual will have the opportunity to provide their perspective on the need for a 'no contact' order, the terms of any 'no contact' order issued, and the potential for modifying the 'no contact' order, and will be allowed to submit evidence in support of their view.
- Assistance from College officials in obtaining an order of protection or restraining order from law enforcement against an individual.
  - Orders of protection and restraining orders are similar to 'no contact' orders, except that they are imposed by the local police, not by the College.

If an accused individual violates an order of protection or restraining order, they could be arrested. The College reserves the right to impose consequences on accused individuals who violate orders of protection and restraining orders, such as imposing additional conduct charges and/or subjecting the accused to interim suspension.

- Assistance from College campus security in calling on & assisting law enforcement in effecting an arrest when the accused individual violates an order of protection.
- Having an accused individual subjected to interim removal or other appropriate interim measures when he/she poses an immediate threat to the health and safety of any individual or to the College community.
  - Determinations of whether a student poses an immediate threat to the health and safety of the College community are made by Monroe College administration. In making such determinations, the College acts in good faith and takes into consideration:
    - The nature of the allegation in question
    - Subsequent behavior occurring after the allegation
    - The potential risk of harm or disruption to the campus community and the reporting individual
    - Other relevant factors, such as whether the alleged behavior represents an escalation in behavior from past incidents, the possession and/or use of a weapon, and whether alternatives to interim removal are available
  - When the threat posed implicates mental health issues, the student will be required to provide the College with documentation from an appropriate healthcare provider in order to return to campus. Additional safety precautions may also be taken where the College deems it necessary.
  - When certain crimes occur in certain areas on and/or near campus that represent a serious or continuing threat to the campus community, Monroe College is obligated under federal law to issue a timely warning, in order to protect the safety of others. Crimes triggering a timely warning might include, for example, a rapist who is still present on campus. When a timely warning is issued, the warning will never identify any victims or reporting individuals.

- Obtaining reasonable and available interim measures and accommodations for changes in an individual's academics, housing, employment, transportation, or other arrangements in order to help ensure safety, prevent retaliation, and avoid a hostile environment, such as:
  - Changes to class schedule
  - Changes to work schedule
  - Changes in dormitory assignment
  - Assistance finding alternate transportation
  - Assistance finding alternate housing
  
- Other protections, services, and accommodations that may be appropriate.

## 2. Disciplinary Process for Students who Commit Sexual Misconduct

When a student commits or is believed to have committed sexual misconduct – whether committed against another student, other member of the campus community, or non-member of the campus community – the student will likely face student conduct charges and be subjected to Monroe College’s **Formal Disciplinary Process**, which is described below. In certain cases, the College’s **Informal Resolution Process** may also be available to the parties in place of using the Formal Disciplinary Process, when all involved parties mutually agree and so long as the Title IX Coordinator deems it appropriate.

Reports of potential and actual violations of this policy, as listed and described in **Prohibited Behavior** in **Section 4**, will be processed as follows. All written notifications referenced below will be provided by Monroe College officials to students via the college’s email system.

### Reporting

Monroe College has designated Title IX Coordinators who are responsible for receiving reports and complaints of sex discrimination and sexual misconduct, including but not limited to sexual harassment, sex assault, stalking, and relationship violence. The Title IX Coordinator accepts reports from both students and employees, as well as from third parties. For students who are under age 18, students’ parents (or legal guardians) are entitled to submit an incident report on their behalf. For students who are aged 18 or older, Monroe College will accept reports from parents/guardians, however, the College is limited to communicating information to parents/guardians pertaining to student disciplinary matters only to the extent authorized by the student and/or as authorized by law.

Individuals have several options for reporting an incident of sexual misconduct – see **How to Report Incidents of Sexual Misconduct** in **Section 5** of this policy for more details. All submitted reports of sexual misconduct will be reviewed by the Title IX Coordinator.

### Investigation

If appropriate, the Title IX Coordinator will conduct an investigation into the incident reported. Students who have reported an incident of sexual misconduct – whether done so privately, confidentially, or anonymously – have the option of requesting that the College not conduct an investigation; however, under certain circumstances, Monroe College may determine that an investigation is necessary to protect the

health and safety of other students. When the College determines that an investigation is necessary, the student who submitted the incident report will be notified in writing. Students who have anonymously submitted a report regarding an incident of sexual misconduct should be aware that their anonymity may inhibit Monroe College's ability to conduct a full investigation of the incident and/or communicate with the student regarding actions taken.

Any investigation conducted will be done so in a fair, impartial, thorough, and timely manner by appropriately trained individuals. Prior to commencing an investigation, the Title IX Coordinator will issue written notice to the accused individual (and to the reporting individual, if known) stating the allegation made.

If, upon completion of the investigation, the Title IX Coordinator determines that a violation of Monroe College's Sexual Misconduct Policy has occurred, the Title IX Coordinator will initiate the College's Formal Disciplinary Process against the accused individual, unless the Title IX Coordinator has otherwise determined that the Informal Resolution Process would be an appropriate and effective method for addressing the misconduct in question.

If the Title IX Coordinator determines that pursuing the College's Formal Disciplinary Process is not warranted, the Title IX Coordinator will issue simultaneous written notification to both the accused individual and the reporting individual (if known) stating the reason for dismissal of the complaint. Complaints (or any portion or allegation comprising a complaint) may be dismissed by the Title IX Coordinator for reasons including (but not limited to): (i) withdrawal of the complaint (or any portion or allegation comprising a complaint) by the reporting individual; (ii) lack of College jurisdiction over the accused individual due to non-enrollment, non-employment, or other non-affiliation between the College and the individual; (iii) specific circumstances that prevent the College from gathering evidence sufficient to reach a determination regarding the complaint or the allegations therein.

### **Notification of Student Conduct Charges**

The Title IX Coordinator will file student conduct charges against the accused student and schedule a Student Conduct Hearing on the alleged violation, to be held at a campus location and date determined by the Title IX Coordinator. When the Title IX Coordinator files student conduct charges against a student, the Title IX Coordinator will promptly notify such student in writing of the specific violation in question, the date on which the violation allegedly occurred, possible consequences and/or sanctions against the student for such violation, information regarding how the student can dispute the violation alleged (including the date, time, and location of a

Student Conduct Hearing at which the student will be entitled to present evidence), and what (if any) temporary measures will be imposed upon the student while the Student Conduct Hearing is in progress (e.g., temporary removal). The reporting individual (if known) will similarly receive written notice with this same information. The date selected by the Title IX Coordinator will be timely in that it will provide an accused student a reasonable amount of time to prepare for the Student Conduct Hearing while also not constituting an unreasonable delay in resolving the charges. When an alleged violation involves more than one accused student, or when more than one violation is alleged to have been committed by a student, the Title IX Coordinator may determine, in his/her discretion, to schedule separate Student Conduct Hearings, as appropriate. The written notices will also notify the accused student and reporting student of their right to be accompanied at the Student Conduct Hearing by an advisor of choice.

### **Formal Disciplinary Process**

Monroe College's Formal Disciplinary Process consists of a Student Conduct Hearing at which all involved individuals will have an opportunity to state their version of the alleged incident, present evidence, and share testimony from themselves or witnesses. Students are entitled to appeal the outcome of the Student Conduct Hearing, if desired. All individuals designated by Monroe College to implement its Formal Disciplinary Process – including but not limited to the Title IX Coordinator, panel of decisionmakers, and other relevant officials – are appropriately trained in adjudicating sexual misconduct matters and the College's policies and procedures. Either party is entitled to request remote attendance at a hearing via virtual technology; the technology used must enable all hearing participants to see, hear, and speak in real-time. If the accused student fails to or declines to attend the Student Conduct Hearing, the Student Conduct Hearing will be held without the accused student present and the panel may reach a decision of 'responsible' and impose consequences and/or sanctions even in the accused student's absence.

### **Student Conduct Hearing**

The Student Conduct Hearing will be conducted in a fair, impartial, and thorough manner. The Student Conduct Hearing will be presided over by a Hearing Panel comprised of impartial individuals selected by the Title IX Coordinator. At the Student Conduct Hearing, the Title IX Coordinator is responsible for stating the allegations, stating the policy violation in question, and presenting evidence and findings from the investigation conducted that the accused student did commit the policy violation in question. Reporting individuals are entitled to (but are never required to) attend or participate in a Student Conduct Hearing.

All accused students are entitled to a presumption of 'not responsible' (not guilty), and all processes will be conducted in a fair, impartial, thorough, and timely manner. The Title IX Coordinator, or another designated official, will present the College's case, including a statement of the allegations at hand, the College's investigatory findings, the specific policy provision the alleged conduct violates, and any relevant testimony and/or evidence. When the Title IX Coordinator has concluded the case presentation, the accused individual will have an opportunity to present his/her version of events, including their own testimony, testimony by witnesses, and other evidence. If the reporting individual has elected to participate in the hearing, the reporting individual will then have the option (but is not required) to present a statement of his/her own, and may present any additional testimony or evidence that has not already been presented. The Title IX Coordinator will ensure that a full and fair record of the hearing has been preserved and will be maintained for the parties to reference.

The Hearing Panel will subsequently deliberate the matter (either upon conclusion of the hearing or at another reasonably prompt time). The panel will render a decision as to whether the accused student is 'responsible' (guilty) or 'not responsible' (not guilty) for the violation and will impose consequences and/or sanctions on an accused student found 'responsible', if appropriate. The panel will issue to the Title IX Coordinator a written report setting forth these determinations, as well as the panel's rationale for such decisions. The Title IX Coordinator will then issue written notice to all parties simultaneously of the Student Conduct Hearing panel's decision regarding the accused student's responsibility and the imposed consequences/sanctions (if any), including the rationale in support of such consequences/sanctions. This written notice will be provided to the accused student in writing within five days of the Student Conduct Hearing. The reporting individual will receive a written copy of the same information on the same day as the accused student.

Both the accused individual (and the reporting individual, if participating in the Formal Disciplinary Process) are entitled to appeal a finding of responsibility and/or a sanction imposed (or both), if desired. In addition to the written notification of the panel's decision and the imposed consequences/sanctions (if any), any accused student found 'responsible' will also receive written notice regarding his/her right to appeal the panel's decision and/or any imposed consequences/sanctions. Likewise, the reporting individual will receive a written copy of the same information on the same day as the accused student.

An accused student found 'responsible' may commence his/her appeal by following the procedures described in the paragraphs titled 'Appeals Process' on the next

several pages. An appeal may also be commenced by reporting individual (if they participated in the Formal Hearing Process) by following the same procedures. In the event an appeal is requested, the Student Conduct Hearing panel's decision will be protected from public release by the College until the Appeals Process is complete and final, unless the law requires otherwise; however, the students involved may choose whether or not to discuss or disclose the outcome of the Student Conduct Hearing.

If a student does not commence an appeal within the required timeframe (i.e., 10 business days from receiving written notification of the Student Conduct Hearing panel's decision), then the Student Conduct Hearing panel's decision will be final.

### **Standard of Evidence**

When implementing the Formal Disciplinary Process, the College is determining whether an individual is "responsible" or "not responsible" for an alleged violation of College policies. At all times, the burden is on the College to establish that the alleged violation of this policy was committed by the accused student in question – this is not the responsibility of the reporting individual, nor is the burden on the accused student to prove that he/she did not do something. The standard of evidence required in both the Student Conduct Hearing and in the Appeal Hearing, if one is sought, is a preponderance of evidence. 'Preponderance of evidence' means that the relevant Hearing Panel must decide in favor of the party that, as a whole, has the stronger evidence that the violation was or was not committed, however slight the edge over the other party's evidence may be. 'Preponderance of evidence' is sometimes described as 'more likely than not' or '51% probability'. The evidence should be sufficient to incline a fair and impartial mind to one side of the issue over the other, but it is not necessary for that mind to be completely free from all reasonable doubt. 'Preponderance of evidence' is a different and lesser standard of evidence than that used in criminal proceedings; rather, it is the standard of evidence often used in civil court proceedings.

### **Advisors**

Parties are entitled to be accompanied throughout hearing proceedings by an advisor of their choice from the Monroe College community. In cases of sexual assault, domestic violence, dating violence and stalking, the advisor may be an attorney. Advisors may sit with parties during all portions of hearing proceedings, and parties may confer with their advisor before, during, and after proceedings. Advisors are not allowed to directly participate at any point during the proceedings. Any arguments or evidence presented during a hearing must be presented by the individual

himself/herself. All participation by parties and their advisors will be subject to College rules for hearing procedures and decorum, as applicable. In the event a party cannot attend a proceeding or a portion thereof, the advisor is not allowed to attend or participate on the individual's behalf.

### **Qualifications**

All individuals designated by Monroe College to implement its Formal Disciplinary Process and/or who are otherwise involved throughout the Formal Disciplinary Process – including but not limited to the Title IX Coordinator, the hearing panel and/or appeal panel, and other relevant officials – are appropriately trained in adjudicating sexual misconduct matters and the College's policies and procedures. All such individuals are similarly trained to serve in an impartial manner without bias or conflicts of interest. Any concerns regarding impartiality should be discussed with the Title IX Coordinator (or, alternately with \_\_\_).

### **Recordkeeping**

In cases of alleged sexual assault, domestic violence, dating violence, or stalking, a full and fair record of the Student Conduct Hearing will be preserved and maintained by the College for seven years. For all hearings, the College is required to create either an audio-visual record or a transcript of proceedings. Parties are entitled to inspect and review their hearing records, subject to reasonable limitations by the College as to time and nature of access.

### **Appeals Process**

If a Respondent or Complainant does not accept the findings of the Hearing Officer(s), the party may request an appeal through the following procedures. The request for appeal must be submitted within five (5) Business Days of receipt of the Hearing Officer's decision.

Appeals are not intended to be full re-hearings or the basis for a new investigation of the Complaint. The Appeals Panel may accept or modify the original decision. Appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal. The Appeal Panel's decision to deny a requested outcome on appeal is final.

The ONLY grounds for appeal are as follows:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal that could have affected the outcome of the matter;
- The Title IX Coordinator, Investigator(s), or Hearing Officer(s) had a conflict of interest or bias for or against an individual party.

Any party who files an appeal must do so in writing to the Title IX Coordinator. The request for appeal will then be forwarded to an appointed Appeals Panel of three for review. The non-appealing party will be given an opportunity to review the written appeal and submit a written response not to exceed ten (10) pages within five (5) business days. The Appeal Panel's determination need not be unanimous but, at least two of the panel members must agree on the outcome.

If the Appeals Panel determines that a procedural error occurred, they may return the original Complaint to the Hearing Officer with instructions to reconvene to remedy the error. The results of a reconvened hearing cannot be appealed.

In rare cases, where the error cannot be remedied by the original Hearing Officer(s) (as in cases of bias), the Appeals Panel may order a new Hearing with a new Hearing Officer(s) appointed by the Title IX Coordinator as appropriate. The results of a new hearing with a new Hearing Officer(s) can be appealed once on the grounds for appeal listed above.

The Appeals Panel may in their discretion suspend any sanctions imposed by the Hearing Officer during the pendency of the appeal and/or any new Hearing of the original Complaint.

The Appeals Panel will render a written decision on the appeal to all parties within twenty-one (21) Business Days from receipt of the request for appeal. The decision on appeal, which will include the rationale for the decision, will be delivered to the parties simultaneously via their institutional email account or other reasonable means.

In cases of Sexual Assault, Domestic Violence, Dating Violence or Stalking, if neither party submits a written appeal within five (5) Business Days of receipt of the Hearing Officer's decisions, the Title IX Coordinator, as appropriate, will provide the parties with written notification that the Hearing Officer's decision is

final. In cases involving all other kinds of alleged Title IX Sexual Harassment, the decision will be deemed final upon expiration of the period of time to appeal and no written notice will be provided.

### **Possible Sanctions**

The following possible sanctions may be imposed as a result of a Student Conduct Hearing and/or an Appeal. The following outcomes may also be considered, along with other options not listed here, as potential outcomes for the Informal Resolution Process. In addition, if at any point (whether during or prior to any such hearing) a student's presence on campus creates a threat to the health, safety, and/or well-being of other students or other members of the College community, Monroe College reserves the right to immediately remove on an interim basis that student from campus until the time of the Student Conduct Hearing and/or Appeal.

The following list of possible consequences/sanctions is not exhaustive, and these consequences/sanctions may be imposed singularly or in any combination. Different and/or additional consequences or sanctions may be imposed by a Student Conduct Hearing panel and/or Appeal panel as the panel members may deem appropriate.

- No Consequences/Sanctions: Where the Student Conduct Hearing panel (and/or the Appeal Hearing panel, in the event an appeal is sought) determines that a student is 'not responsible', the student conduct charges against the student will be dismissed.
- Verbal Warning: A discussion with the student about the incident, with no written notification issued.
- Written Warning: A written notice to the student stating that his/her conduct is in violation of College regulations and that the continuation of said conduct during a stated period of time may be cause for more serious disciplinary action, such as community service, probation, or suspension.
- Counseling and/or Training: A requirement that a student undergo appropriate counseling and/or training in order to remain a member of the College community.
- Restitution: Financial reimbursement for damages to property.
- Community Service: A stated number of hours, set in writing, of donated service commensurate with the conduct violation.

- 'No Contact' Order: An order from the College requiring the student to stay away from the victim for a stated period of time. Students' academic schedules may also be amended.
- Disciplinary Probation: A stated period of time, set in writing, during which the student is expected to demonstrate appropriate conduct as a member of the College community. Failure to demonstrate appropriate conduct may subject the student to further consequences/sanctions, such as community service and/or suspension.
- Residence Hall Suspension: A stated period of time, set in writing and not to exceed one academic year, during which the student is excluded from living in and/or visiting the campus residence halls. Upon the expiration of the suspension period, the student may be subjected to probation period during which the student is expected to demonstrate appropriate conduct as a member of the College community. During residence hall suspension, a student may or may not also be concurrently suspended from classes and/or campus activities.
- Disciplinary Suspension: A stated period of time, set in writing and not to exceed one academic year, during which the student is excluded from classes and/or campus activities. Upon the expiration of the suspension period, the student may be subjected to a probation period during which the student is expected to demonstrate appropriate conduct as a member of the College community. When the student's punished conduct involves certain types of violence, this sanction automatically results in a Transcript Notation sanction.
- Residence Hall Expulsion: Permanent termination of privileges to live and/or visit the campus residence halls.
- Disciplinary Dismissal from the College (Expulsion): Permanent termination of status as a student of the College. When the student's punished conduct involves certain types of violence, this sanction automatically results in a Transcript Notation sanction.
- Transcript Notation: Where a student is found 'responsible' for a violation involving certain types of violence, including sexual assault, dating violence, domestic violence and stalking, and is then subjected to either suspension or expulsion from the College, the student's transcript will automatically receive a notation stating "Suspended after a finding of responsibility for a Code of Conduct violation" or "Expelled after a finding of responsibility for a Code of Conduct violation," as appropriate. Where a student withdraws from the College while such charges are pending, the student's transcript will receive a notation stating "Withdrew with conduct charges pending." Transcript notations regarding expulsion, withdrawal, and suspension shall be permanent.

- Other consequences and/or sanctions as deemed appropriate by the Student Conduct Hearing panel and/or Appeal Hearing panel.

### **Informal Resolution Process**

There may be times when a reporting individual wishes to report certain types of sexual misconduct for action by Monroe College but does not wish to participate in the College's Formal Disciplinary Process (i.e., an investigation and, if appropriate, a hearing) or is not interested in the potential outcomes prescribed under the Formal Disciplinary Process. In these cases, the involved parties have the option of mutually agreeing to instead participate in the College's Informal Resolution Process, rather than the Formal Disciplinary Process. The Informal Resolution Process is only appropriate for certain types of misconduct, and the Title IX Coordinator reserves the discretion to deny any request to engage in the Informal Resolution as an alternative to the Formal Disciplinary Process; this determination is not subject to appeal. The Informal Resolution Process is never available for the following types of misconduct:

- Any allegation of a College employee sexually harassing a student
- Any allegation in which there is a grave, ongoing, imminent, and/or immediate threat of harm or safety risk to the campus or to any individual
- Any allegation for which the accused individual is a repeat offender
- Any allegation in which the alleged misconduct is sufficiently grave in nature that informal resolution would not be appropriate

Either party can propose that a matter be resolved through the Informal Resolution Process; no party is ever required to participate, and the process is only available if all involved parties voluntarily agree to participate. Each party will be required to provide their consent in writing. The involved parties may elect to participate in the Informal Resolution Process at any time, even if they have already moved forward with the Formal Disciplinary Process. Similarly, parties may choose to stop participating at any time up until the process officially concludes. The Title IX Coordinator may likewise determine at any time that the Informal Resolution Process is not an appropriate method for resolving a given matter and may instead require that the matter be resolved through the College's Formal Disciplinary Process; this determination is not subject to appeal.

The informal resolution process will be conducted by an impartial facilitator chosen by the College who is appropriately trained to handle sexual misconduct matters and engage in the method of resolution provided.

Informal resolution can take a variety of forms. Monroe College offers several options for informal resolution. Outcomes will vary depending on the type of informal resolution that is chosen. The parties must mutually agree on the type of informal resolution to be used.

## Section 8: Student Rights

The following rights are guaranteed to students by New York State's "Enough Is Enough" law. Please read them carefully. If you have any questions, you can always ask your campus Title IX Coordinator. The rights listed in the Student Bill of Rights will also be discussed with you and/or provided to you when you disclose or report an incident of sexual misconduct to any Monroe College official, whether they are a confidential official or an official who can guarantee privacy.

### Student Bill of Rights

All students have the right to:

1. Make a report to local law enforcement and/or the State Police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the student conduct process and/or criminal justice process free from pressure by the College;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the college courteous, fair, and respectful health care and counseling services, where available;
6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few College officials as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by the college, any student, the accused and/or their friends, family, and acquaintances within the jurisdiction of the College;

9. Access to at least one level of appeal of a determination;
10. Be accompanied by an advisor of choice who may assist and advise a reporting individual, or accused individual, throughout the student conduct process, including during all meetings and hearings related to such process; and
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or student conduct process of the College.

## **Additional Rights**

All reporting individuals are further advised of their right to:

- Notify College campus security, local law enforcement, and/or State Police;
- Have emergency access to a Title IX Coordinator or other College official trained in interviewing victims of sexual assault who will be available upon the first instance of disclosure by the reporting individual to provide information regarding options to proceed and, where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible; to explain that the criminal justice process utilizes different standards of proof and evidence and that any questions about whether a specific incident violates New York State criminal laws should be addressed to law enforcement or to the local district attorney; and to explain whether he/she is able to offer the reporting individual confidentiality or privacy and to inform the reporting individual of other reporting options;
- Disclose confidentially the incident to College officials, who may offer privacy and/or confidentiality in accordance with applicable laws, as appropriate, and who can assist in obtaining services and resources for reporting individuals;
- Disclose confidentially the incident and obtain services from the State or local government;
- File a report of sexual assault, domestic violence, dating violence, and/or stalking; have the right to consult the Title IX Coordinator and other appropriate College officials for information and assistance; and have the right to have reports investigated in accordance with college policy, including the right that the reporting individual's identity will remain private at all times if the reporting individuals wishes to maintain privacy;
- Disclose, if the accused is an employee of the College, the incident to the College's Human Resources Officer (Kerry Wirsing: [kwirsing@monroecollege.edu](mailto:kwirsing@monroecollege.edu) or 646-393-8306) and/or have the right to request that a confidential or private employee assist in reporting the incident to the Human Resources Officer;

- Receive assistance from College officials in initiating legal proceedings in family court or civil court;
- Withdraw a complaint or withdraw from involvement in the College student conduct process at any time.

Monroe College will ensure that every student is afforded the following rights:

- The right to request that student conduct charges be filed against the accused in proceedings governed by New York State’s “Enough Is Enough” law (Education Law 129-B) and the procedures established by the College in this policy book;
- The right to a process in all student conduct cases where a student is accused of sexual assault, domestic violence, dating violence, stalking, or other sexual misconduct that violates this policy, that includes, at a minimum:
  - notice describing the date, time, location, and factual allegations concerning the violation; reference to the specific policy provisions alleged to have been violated; and possible sanctions for the violation;
  - an opportunity to offer evidence during an investigation, and to present evidence and testimony at a student conduct hearing, where appropriate, and to have access to a full and fair record of any such hearing; and
  - access to at least one level of appeal of a determination before a panel that is fair and impartial and does not include individuals with a conflict of interest.
- Throughout proceedings involving such an accusation, the right for both the reporting individual and the accused:
  - to be accompanied by an advisor of choice who may assist and advise throughout the student conduct process, including during all meetings and hearings related to the process;
  - to a prompt response to any complaint and to have the complaint investigated and adjudicated in an impartial, timely, and thorough manner by individuals who receive annual training in conducting investigations of sexual violence, the effects of trauma, impartiality, the rights of the accused (including the right to a presumption that the accused is ‘not responsible’ until a finding of responsibility is made pursuant to New York State’s “Enough Is Enough” law and the college’s policies described in this policy book), and other issues including but

not limited to domestic violence, dating violence, stalking, and sexual assault;

- to an investigation and student conduct process that is fair, impartial, and provides a meaningful opportunity to be heard, and that is not conducted by individuals with a conflict of interest;
- to have the College’s student conduct process run concurrently with a criminal justice investigation and proceeding, except where law enforcement requests a temporary delay in order to gather evidence;
- to review and present relevant available evidence in the case file or otherwise in the possession or control of the College;
- to exclude their own prior sexual history with persons other than the other party in the student conduct process and/or their own mental health diagnosis and treatment from admittance in the stage of College’s student conduct proceedings where responsibility is determined;
- to receive written advance notice of:
  - any meeting he/she is required or eligible to attend
  - any specific rule or law alleged to have been violated and in what manner
  - the consequences and/or sanctions that may be imposed as a result of the student conduct process
  - the determination of the student conduct hearing panel and the rationale for any consequences/sanctions imposed
- to make an impact statement during the point of student conduct proceedings where appropriate consequences/sanctions are being determined;
- to be informed of the possible consequences/sanctions that may be imposed upon the outcome of the student conduct process; to simultaneous written notification of the outcome of the student conduct process, including any consequences/sanctions actually imposed; and the rationale for the consequences/sanctions actually imposed;
- to choose whether to disclose or discuss the outcome of the student conduct process; and
- to have all information obtained during the course of the student conduct process be protected from public release until the student conduct appeals panel makes a final determination (unless federal and/or State law requires otherwise).

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