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Chapter: Personnel

Modification No. 002

Subject: **Sexual Misconduct**

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I. Policy Statement

It is the policy of Montgomery College to establish and maintain an environment in which all members of the Montgomery College community can work or participate in College education programs and activities free from all forms of sexual misconduct. Sexual misconduct is a form of sex discrimination prohibited by federal and state discrimination laws, including Title IX of the Education Amendments of 1972 and Title VII of the Civil Rights Act of 1964. In addition, some forms of sexual misconduct violate the criminal laws of the State of Maryland. Sexual misconduct in any form will not be tolerated by Montgomery College. The College will take immediate action to stop sexual misconduct of which it is aware, prevent its recurrence, and remedy its effects.

II. Definitions

For purposes of this Policy, “sexual misconduct” is an umbrella term that encompasses various types of prohibited conduct, including sexual harassment, sexual assault, domestic violence, dating violence, sexual exploitation, sexual intimidation, and stalking. The President is authorized and directed to establish procedures to define other terms relevant to this Policy, including but not limited to: “sexual harassment”, “sexual assault”, “domestic violence”, “dating violence”, “sexual exploitation”, “sexual intimidation”, and “stalking”.

III. Applicability

All students and employees of the College must comply with this Policy. Sexual misconduct is prohibited between students, between employees, between students and employees, and by students or employees against contractors, vendors, or other individuals whose relationship to the student or employee is through the College's facilities, programs or activities. Similarly, the College will not tolerate sexual misconduct by College contractors, vendors, or other third parties, including visitors and guests to the College whose relationship to the victim is through the College's facilities, programs or activities. This Policy, applies regardless of the sex, sexual orientation, or gender identity of either the perpetrator or the victim of the sexual misconduct. This Policy applies to sexual misconduct (i) that occurs on College premises, including any property owned or leased by the College (including College buses) or that the College has permission to occupy for purposes of conducting a College-sponsored program or event; (ii) that occurs in connection with any College-sponsored, College-recognized, or College-approved activities (e.g., off-campus education programs and activities such as College-sponsored field trips, athletic team travel, and events for officially recognized College clubs that occur off-campus, and social activities for employees sponsored by the College or relating to the business of the College); (iii) that occurs during business travel or otherwise in connection with College-related business; or (iv) that results in creation or contribution to a hostile environment on campus or in an off-campus education or College-related program or activity, regardless of where the conduct occurred. All incidents of sexual misconduct should be reported so that the College may determine whether the conduct falls within the scope of this Policy.

IV. Reporting and Confidentiality

All members of the Montgomery College community may report allegations of sexual misconduct at any time, but are encouraged to make such reports promptly in order to maximize the College's ability to respond and take appropriate action, including to obtain evidence and to conduct a prompt and equitable investigation.

Students may report alleged sexual misconduct to the Title IX Coordinator or to any "Responsible College Employee," which includes any College administrator, supervisor, faculty member, campus security officer, coach, trainer, or other employees with a responsibility for student welfare. Employees and other members of the College community may report sexual misconduct to the Title IX Coordinator or the Director of the Employee Relations, Diversity and Inclusion, and employees may also report sexual misconduct to their supervisor. A Responsible College Employee, the Director of Employee Relations, Diversity and Inclusion, and any other employee (other than sworn police officers) who receives a report of sexual misconduct must promptly relay such report to the Title IX Coordinator. No employee (other than sworn police officers) is authorized to investigate or resolve reports of sexual misconduct without the involvement of the Title IX Coordinator.

Christopher Moy is the College's Title IX Coordinator and can be reached in person in Room 150 of the Mannakee Building, by telephone at 240-567-5412, or by e-mail at [christopher.moy@montgomerycollege.edu](mailto:christopher.moy@montgomerycollege.edu).<sup>1</sup> Members of the College community may contact the Title IX Coordinator in order to seek information about courses of action available to resolve reports or complaints that involve sexual misconduct; to file a complaint or otherwise make a report of sexual misconduct; to get information about available resources and supports services available to victims of sexual misconduct, and; to ask any questions concerning College Policies and Procedures relating to sexual misconduct.

Certain College employees will be designated Confidential Resources for purposes of this policy. Confidential Resources are not considered to be Responsible College Employees – that is, upon receipt of a report of an alleged violation, Confidential Resources are not required to notify the Title IX Coordinator. An individual seeking support or guidance with respect to an alleged incident of sexual misconduct may contact any Confidential Resource, who will normally keep private the individual's identity and any other information concerning the incident.

The College recognizes that allegations of sexual misconduct are a sensitive subject for all parties involved and is committed to maintaining the privacy of the parties involved to the fullest extent possible, consistent with applicable law and the need for investigation and resolution. The College, through the Title IX Coordinator, may investigate and take reasonable action even when the individual making a report of sexual misconduct requests anonymity or requests that no action be taken. Thus, absolute confidentiality cannot be guaranteed. In all cases, the College will take care to protect the identity of the parties through processes that provide for discussion of the allegations only among those

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<sup>1</sup> The President is authorized to change the designation of the Title IX Coordinator by a procedure that provides the name and contact information of the Title IX Coordinator similar to the information provided in this Policy. Upon adoption of the procedure with this information and the posting of notice of the change to the College's web site, this Policy may be modified by direction of the President to substitute the new information about the Title IX Coordinator without the need for further action of the Board of Trustees.

who have a legitimate administrative, investigative, or legal need to know.

V. College Aid to Victims of Sexual Misconduct

The President is authorized and directed to establish procedures to provide victims of sexual misconduct with reasonable accommodations (e.g., changes in academic, transportation and/or working situations) and/or protective measures that may be made available upon request to a victim of sexual misconduct, regardless of whether the victim chooses to report the sexual misconduct to campus security or local law enforcement.

VI. Investigation

All reports of sexual misconduct will be taken seriously and investigated as appropriate. The President is authorized and directed to establish procedures for the investigation of such reports, which shall provide for a prompt, thorough, and impartial process.

VII. Time Frame

The College strives to investigate and resolve all complaints within sixty (60) days after the filing of a complaint. Actual resolution time may vary depending on many factors, including but not limited to, the complexity of the investigation and the severity and extent of the alleged misconduct.

VIII. Grievance; Resolution; Sanctions

Individuals found to have committed sexual misconduct in violation of this Policy will be subject to disciplinary action in accordance with applicable College policies and procedures and/or collective bargaining agreements.

Employees found in violation of this Policy are subject to disciplinary action in accordance with the applicable College policies and procedures for disciplinary action and discharge (34002 and 34003), or, for bargaining unit members, the applicable procedures in the collective bargaining agreement. Sanctions will be based on the circumstances and nature of the violation, ranging from a reprimand up to and including termination of employment. Students found in violation of this Policy are subject to disciplinary action in accordance with procedures set forth in the Student Code of Conduct (42001). Sanctions will be based on the circumstances and nature of the violation and include, but are not limited to, a warning, disciplinary probation, community service, participation in sexual misconduct education programming, suspension and dismissal from the College. In the event of sexual misconduct by a third party against a College student or employee, the College will take appropriate action within its control to address the misconduct and prevent its recurrence, including but not limited to, referring to local law enforcement to issue a "No Trespass" notice denying access to the College's buildings and grounds.

As required or appropriate, parties will be informed of the outcome of any resolution process based on a violation of this Policy.

Persons who commit sexual misconduct in violation of federal, state, or local law may also be subject to criminal charges and penalties as a result of related legal proceedings.

IX. Evidentiary Standard

In any investigation and/or disciplinary proceeding concerning an alleged violation of this

Policy, the finding will be determined by a preponderance of the evidence.

X. Good Faith Reporting

Allegations of sexual misconduct are extremely serious, with potential for great harm to the accused if ill-conceived or made with malice. An individual found to have knowingly filed a false allegation may be subject to separate appropriate disciplinary action. A complaint made in good faith is not considered false merely because the evidence does not ultimately support the allegation of sexual misconduct.

XI. Retaliation

This Policy prohibits retaliation by anyone in the College community against an individual because the individual reports or complains about sexual misconduct or participates in the College's investigation or proceedings related to an allegation of sexual misconduct. When the College is aware of possible retaliation, it will take immediate and appropriate steps to investigate. Students or employees who commit retaliation in violation of this Policy are subject to appropriate disciplinary action. The Complainant or participants in any report or investigation of sexual misconduct who believe they have experienced retaliation in violation of this Policy should immediately report such conduct to the Title IX Coordinator.

XII. Education

Education is a key element of this Policy. The College will provide education and information, as appropriate, for students and employees to enhance understanding and increase awareness of the College's Sexual Misconduct Policy and Procedures. Sufficient periodic training will be conducted for Responsible College Employees and for those involved in the investigation and resolution of complaints, as determined by the President. Any mandatory education requirements will be announced and posted on the College's website. The President is authorized to provide institutional leadership and guidance for developing education programs to increase knowledge and share information and resources to prevent sexual misconduct, promote safety, and reduce perpetration. Some goals to be achieved through education are: (a) ensuring that all individuals are aware of their rights; (b) notifying individuals of conduct that is proscribed; (c) informing employees, students, and other members of the college community, including contractors, about the proper way to recognize and address complaints involving a violation of this Policy; (d) preventing issues that this Policy addresses, and; (e) identifying the necessary steps for preventing sexual misconduct and addressing its effects.

XIII. The President is authorized and directed to establish procedures to implement this Policy.

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Board Approval: December 15, 2014; September 21, 2015

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I. Introduction

- A. Montgomery College is committed to establishing and maintaining an environment in which all members of the Montgomery College community can work and participate in College education programs and activities free from all forms of sexual misconduct, as defined in Section II below. Sexual misconduct will not be tolerated and the College will consider any violation as a significant act of misconduct that will result in disciplinary action. When made aware, the College will take immediate action to stop the misconduct, prevent its recurrence, and remedy its effects. The resolution processes described herein relating to reports of sexual misconduct will be prompt, thorough, and impartial and will be conducted by College officials who, at minimum, receive annual training on issues related to sexual misconduct and on how to conduct the resolution processes described herein in a manner that protects the safety of victims and promotes accountability.
- B. Nothing in this Procedure shall supersede the legal obligations of a College employee or the College to comply with mandatory reporting laws, such as those applicable to sexual or other abuse of minors. In all cases, College employees and the College will comply with Montgomery College Policy 75005-Protection of Minors.

II. Applicability

Sexual misconduct is prohibited between students, between employees, between students and employees, and by students or employees against contractors, vendors, or other individuals whose relationship to the student or employee is through the College's facilities, programs, or activities. Similarly, the College will not tolerate sexual misconduct by College contractors, vendors, or other third parties, including visitors and guests to the College, whose relationship to the victim is through the College's facilities, programs, or activities.

- A. These procedures apply regardless of the sex, sexual orientation, or gender identity and expression of either the perpetrator or the victim of sexual misconduct.
- B. These procedures apply to sexual misconduct that:
  - 1. occurs on College premises, including any property owned or leased by the College (including College vehicles) or that the College has permission to occupy for purposes of conducting a College-sponsored program or event;
  - 2. occurs in connection with any College-sponsored, College-recognized, or College-approved activities (e.g., off-campus education programs and activities such as College-sponsored field trips, athletic team travel, and events for officially-recognized College clubs that occur off campus, and social activities for employees sponsored by the College or relating to the

- business of the College);
3. occurs during business travel or otherwise in connection with College-related business; and,
  4. results in creation of or contribution to a hostile environment on campus or in an off-campus education- or College-related program or activity, regardless of where the conduct occurred;
- D. All incidents of sexual misconduct should be reported so that the College may determine whether the conduct falls within the scope of the Policy and may respond appropriately under these procedures.

### III. Definitions

The following capitalized defined terms are used throughout the Procedure:

- A. Attorney/Non-Attorney Advisor – an individual selected by a Complainant or Respondent to be present at any part of the College processes related to a report under this Procedure. The role of the Attorney or Non-Attorney Advisor is limited to providing advice and consultation directly to the Complainant or Respondent (i.e., the Attorney or Non-Attorney Advisor is not to take an active representation role under this Procedure on behalf of the Complainant or Respondent, as an Attorney would do in a formal legal proceeding).
- B. Complainant – the person against whom the sexual misconduct is alleged to have occurred (i.e., the person who is alleged to have been a victim/survivor of sexual misconduct). A Complainant may also be a third party (e.g., a Third-Party Witness or other individual with knowledge or evidence of misconduct) who reports sexual misconduct against another individual. Unless otherwise noted or determined by the Title IX Coordinator or Investigator, for purposes of this Procedure the term Complainant refers generally to an individual who reports misconduct against himself/herself or against another individual.
- C. Confidential Resource – specific College employees whose role under this procedure is limited to providing confidential support and guidance to any individuals who wish to discuss alleged incidents of sexual misconduct. Confidential resources are specific College employees who are not considered to be Responsible College Employees and therefore are not required to notify the Title IX Coordinator (or alternatively, if the sexual misconduct is by or against an employee, the Director of Employee Relations, Diversity and Inclusion) upon receipt of a report of sexual misconduct (see Section IV, H below).
- D. Consent – a knowing, voluntary, and affirmatively communicated willingness to participate in a particular sexual activity or behavior. Consent may be expressed either by words and/or actions as long as those words and/or actions create a mutually understandable agreement to engage in specific sexual activity and are given by a person with the ability and capacity to exercise free will and make a rational, reasonable judgment. Silence or an absence of resistance does not imply consent. Consent can be withdrawn at any time. Additionally:
  1. Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity (e.g., consent to engage in

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- sexual activity with one person does not imply consent to engage in sexual activity with another).
2. Previous relationships or prior consent cannot imply consent to future sexual acts.
  3. In order to give effective consent, one must be of legal age, as defined by applicable Maryland law.
  4. It is a violation of Policy 31001 to engage in sexual activity with someone whom one should know to be – or based on the circumstances should reasonably have known to be – mentally or physically incapacitated. To be incapacitated means that a person cannot make rational, reasonable decisions because he or she lacks the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction). Incapacitation may result from sleep or unconsciousness, temporary or permanent mental or physical disability, involuntary physical restraint, or the influence of drugs or alcohol.
- E. Corrective Action – action(s) recommended by the Investigator to be taken to sanction the Respondent(s) and provide appropriate remedies to the Complainant, if the Investigator concludes that there has been a violation of the College’s Sexual Misconduct Policy.
- F. Dating violence – violence including, but not limited to, sexual or physical abuse or the threat of such abuse, committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. For purposes of this Procedure, the existence of such a relationship shall be determined based on the Complainant’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- G. Domestic violence – a felony or misdemeanor crime of violence committed (i) by a current or former spouse or intimate partner of the victim; (ii) by a person with whom the victim shares a child in common; (iii) by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; (iv) by 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 (v) 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.
- H. Formal Resolution – one of several available routes for resolution of allegations of sexual misconduct under this Procedure. Formal Resolution involves initiation of a prompt, fair, and impartial Investigation.
- I. Informal Resolution – a remedies-based, non-judicial style approach designed to address allegations of sexual misconduct without taking disciplinary action against a Respondent. Informal Resolution may not be appropriate for resolving allegations of some types of sexual misconduct.
- J. Initial Title IX Assessment – an assessment, conducted by the Title IX Coordinator upon receipt of a report of an alleged violation of Policy 31001-

Sexual Misconduct, to provide an integrated and coordinated response to a report of sexual misconduct.

- K. Investigation – a prompt and thorough process for providing a fair and reliable means of gathering information in the course of Formal Resolution, which is one of several available routes for resolution of allegations of sexual misconduct under this Procedure.
- L. Investigator – the College official, or designee, responsible for conducting investigations of reports of sexual misconduct. Typically, the Title IX Coordinator serves as the Investigator, but the College may engage internal or external individuals who are trained to conduct the resolution processes described in these procedures.
- M. Hostile Environment - when unwelcome conduct of a sexual nature is sufficiently serious that it affects a student's or employee's ability to participate in or benefit from an education program or activity, or creates an intimidating, threatening or abusive educational or working environment. A hostile environment can be created by a school employee, another student, or even someone visiting the school, such as a student or employee from another school.
- N. Respondent – the individual accused of engaging in conduct prohibited under Policy 31001 - Sexual Misconduct.
- O. Responsible College Employee - any College employee:
  1. who has the authority to take action to redress incidents of sexual misconduct;
  2. who has the duty to report to appropriate College officials sexual misconduct by or against students or employees; or
  3. whom a student could reasonably believe has such authority or responsibility.

For student Complaints, Responsible College Employees are:

- Instructional Faculty and Faculty Department Chairs,
- Coaches,
- Athletic trainers,
- Administrators (including but not limited to the Title IX Coordinator),
- Campus Security Officers, and
- Other employees with a responsibility for student welfare

For employee Complaints, Responsible College Employees are:

- Administrators (including but not limited to the Title IX Coordinator and the Director of Employee Relations, Diversity, and Inclusion),
- Supervisors, and
- Campus Security Officers

Employees designated as Confidential Resources are not Responsible College Employees.



- P. Sexual Assault – an offense that meets the definition of (i) rape (i.e., the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim); (ii) fondling (i.e., the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity); (iii) incest (i.e., sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law); or (iv) statutory rape (i.e., sexual intercourse with a person who is under the statutory age of consent).
- Q. Sexual Exploitation – when an individual takes non-consensual (i.e., without consent as defined in this Procedure) or abusive sexual advantage of another for his/her own advantage or benefit, or the benefit or advantage of anyone other than the one being exploited, and such behavior does not otherwise constitute one of other sexual misconduct offenses listed in this Section III.
- R. Sexual Harassment – unwelcome sexual advances, requests for sexual favors, or other behavior of a sexual or gender-based nature where:
1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, evaluation of academic work, or participation in a College-sponsored educational program or activity;
  2. Submission to or rejection of such conduct by an individual is used as the basis for an academic, employment, activity, or program participation decision affecting that individual; or
  3. Such conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with an individual's academic or work performance, denying or limiting a student's ability to participate in or benefit from the College's educational program, or creating an intimidating, hostile, or offensive academic or working environment.
- S. Sexual Intimidation – threatening to sexually assault, exploit, harass, or abuse another person, or engaging in indecent exposure.
- T. Sexual Misconduct – conduct prohibited by Policy 31001 - Sexual Misconduct, including any act of sexual harassment, sexual assault, domestic violence, dating violence, sexual exploitation, sexual intimidation, or stalking as defined in this Procedure.
- U. Support Person - an individual age eighteen (18) or older who is not a Complainant, Respondent, or Third-Party Witness to the alleged misconduct and who serves as a silent and non-participating presence during any part of the processes under this Procedure. The role of the Support Person is solely to observe and provide moral support to a Complainant or Respondent in a way that does not disrupt or delay the process.
- V. Stalking – engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or to suffer substantial emotional distress.

- W. Third-Party Witness - an individual who may have relevant direct or circumstantial knowledge or information about the alleged misconduct.
- X. Title IX Coordinator – the College administrator who oversees the College’s centralized review, investigation, and resolution of reports of sexual misconduct. The Coordinator also oversees the College’s overall compliance with Title IX. The Title IX Coordinator is responsible for:
1. providing oversight of the investigation and resolution of all reports of sexual misconduct involving students, employees (including staff, administrators, and faculty), vendors, and visitors;
  2. recommending updates to the College’s policies and procedures related to sexual misconduct;
  3. designing and/or providing or overseeing training on sexual misconduct and the implementation of the College’s 31001- Sexual Misconduct Policy and Procedure;
  4. advising any individual, including a Complainant, a Respondent, or a third party, about the courses of action available at the College, both informally and formally, and in the community;
  5. providing assistance to any College employee or student regarding how to respond appropriately to a report of sexual misconduct;
  6. monitoring full compliance with all procedural requirements and time frames outlined in this Procedure; and,
  7. training, prevention, and education efforts and periodic reviews of climate and culture.

The College’s current Title IX Coordinator is:

Christopher Moy, Title IX Coordinator  
900 Hungerford Drive, Room 150  
Rockville, MD 20850  
240-567-5412  
[christopher.moy@montgomerycollege.edu](mailto:christopher.moy@montgomerycollege.edu)

IV. Reporting Sexual Misconduct

- A. Making a report means telling someone in authority what happened – in person, by telephone, in writing, or by email. At the time a complaint is made, a Complainant does not have to decide whether or not to request any particular course of action, nor does a Complainant need to know how to label what happened. Choosing to make a report, and deciding how to proceed after making a report, can be a process that unfolds over time. The College provides support that can assist each individual in making these important decisions and to the extent possible and reasonable will respect an individual’s autonomy in deciding how to proceed. In this process, the College will balance the individual’s interest with its obligation to provide a safe and non-discriminatory environment for all members of the College community.

- B. Upon receiving a report, the College shall immediately inform the Complainant of available options about the involvement of law enforcement, including the Complainant's option to (1) notify law enforcement authorities, including the campus security office and local police; (2) be promptly assisted by the College, at the victim's request, in notifying local law enforcement authorities and in obtaining appropriate medical attention, including arranging transportation to the nearest hospital equipped with the Maryland State Police sexual assault evidence collection kit; and, (3) decline to notify such authorities. In Montgomery County, the only facility equipped with the Maryland State Police sexual assault evidence collection kit (SAFE) and specially trained forensic nurses is:

Shady Grove Adventist Hospital  
Forensic Medical Unit  
9901 Medical Center Drive  
Rockville, MD 20850

This is the best option to ensure preservation of evidence that may assist in proving that a criminal offense occurred or may be helpful in obtaining a protection order.

- C. Members of the College community are encouraged, and Responsible College Employees are required, to report all instances of sexual misconduct to the College. In cases where the misconduct is believed to be a crime, reports to local law enforcement are encouraged.
- D. Reports to law enforcement and reports to the College may be pursued simultaneously. A criminal investigation and/or proceeding is not a determination that a violation of Policy 31001–Sexual Misconduct has occurred and the College may implement appropriate interim protective measures and conduct its own Initial Title IX Assessment and resolution process described herein. However, at the request of law enforcement, the College, through the Title IX Coordinator, may defer action described in this Procedure until the initial stages of a criminal investigation are complete. If such a request is made by law enforcement, the Complainant will be notified, and the College will promptly resume action described in this Procedure as soon as possible.
- E. In addition, members of the College community may also report certain instances of sexual misconduct to applicable federal, state, or local government agencies responsible for enforcing laws prohibiting sexual harassment against students or employees. For more information please contact:

U.S. Department of Education  
Office for Civil Rights  
800-421-3481  
[OCR@ed.gov](mailto:OCR@ed.gov)

U.S. Equal Employment Opportunity Commission  
800-669-4000  
[info@eeoc.gov](mailto:info@eeoc.gov)

Maryland Commission on Civil Rights  
800-637-6247  
[mccr@maryland.gov](mailto:mccr@maryland.gov)

Montgomery County Office of Human Rights  
Compliance Section  
240-777-8450

F. Reporting to local law enforcement

1. Sexual misconduct, including but not limited to sexual assault, may be a crime as well as a violation of Policy 31001. The College encourages all individuals to make a report to the College and to local law enforcement whenever a crime may have been committed.

In an emergency, contact the Montgomery County Police Department by dialing 911.

2. The College will assist Complainants who wish to report sexual misconduct to law enforcement authorities, including campus security. The Title IX Coordinator is available to assist a Complainant in reporting to campus security, or a Complainant may contact campus security directly:

- a. Germantown Campus Safety and Security  
282 Science and Applied Sciences (SA) Building  
240-567-7777
- b. Rockville Campus Safety and Security  
101 Counseling and Advising (CB) Building  
240-567-5111
- c. Takoma Park/Silver Spring Safety and Security  
117 Charlene Nunley Student Services (ST) Building  
240-567-1600

Campus security will also assist Complainants in notifying other law enforcement authorities locally or in other jurisdictions, as appropriate.

G. Reporting to the College

1. A report of sexual misconduct may be made at any time. Members of the College community are encouraged to make reports promptly in order to maximize the College's ability to respond and take appropriate action. Individuals are encouraged to report incidents of sexual harassment before they become pervasive or severe, in order to allow the College to respond to the conduct. An individual who has witnessed or has knowledge about an incident of sexual misconduct may report the incident even if such Complainant was not the person against whom such misconduct was directed.
2. As set forth below in Section V of this Procedure, at the time a report is made, the College will provide support that can assist each Complainant in making decisions about whether or not to request any particular course of action. To the extent possible and reasonable, the College will respect a Complainant's autonomy in deciding how to proceed. In this

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process, the College will balance the Complainant's interest with its obligation to provide a safe and non-discriminatory environment for all members of the College community.

- a. Students may report alleged sexual misconduct to the Title IX Coordinator or to any other Responsible College Employee, as defined in Section III.
  - b. Employees and other members of the College community who are not students may report sexual misconduct to the Title IX Coordinator, the Director of Employee Relations, Diversity and Inclusion, or any other Responsible College Employee, as defined in Section III.
3. Before a student or employee reveals information that he or she may wish to keep confidential, a Responsible College Employee should make every effort to ensure that the student or employee understands:
- a. The Responsible College Employee's obligation to report the names of the alleged Respondent and Complainant involved in the alleged sexual misconduct, as well as relevant facts regarding the alleged incident (including the date, time, and location) to the Title IX Coordinator or other appropriate College administrators;
  - b. The Complainant's option to request that the school maintain his or her confidentiality, which the College (e.g., the Title IX Coordinator) will consider; and,
  - c. The Complainant's ability to share the information confidentially with Confidential Resources identified in Section IV, H, 1 below.
4. A Responsible College Employee must promptly notify the Title IX Coordinator (or alternatively, in the case of alleged sexual misconduct by or against an employee, the Director of Employee Relations, Diversity and Inclusion) of any report of sexual misconduct that is brought to his or her attention. The Title IX Coordinator can be reached in person in Room 150 of the Mannakee Building, by telephone at (240) 567-5412, or by e-mail at [christopher.moy@montgomerycollege.edu](mailto:christopher.moy@montgomerycollege.edu). The Director of Employee Relations, Diversity and Inclusion can be reached in person in Room 130 of the Mannakee Building, by telephone at 240-567-5367, or by e-mail at [brenda.williams@montgomerycollege.edu](mailto:brenda.williams@montgomerycollege.edu).
- Failure of such an individual who must report sexual misconduct to comply with these requirements will be treated as a failure to fulfill duties and may result in counseling and/or disciplinary action as appropriate.
5. Reports of sexual misconduct allegedly committed by College employees will be investigated as the College determines appropriate and disciplinary action may be taken against an employee found to have violated this Policy regardless of the wishes of the Complainant.
6. Any Complainant who reports sexual misconduct to the College can be

assured that all reports will be addressed and resolved in a prompt, thorough, and impartial manner. A Complainant, a Respondent, and all other individuals involved can expect to be treated with dignity and respect.

7. There also may be instances when a Complainant, after making a report of sexual misconduct to a Responsible College Employee, requests that the College not investigate and/or take any action against the Respondent. Upon receiving such a report of sexual misconduct under this Procedure, the College will in every instance conduct an Initial Title IX Assessment as described in Section V.A. At the conclusion of that assessment, the College will determine the appropriate course of action as described in Section V.A.4. Thus, the College, through the Title IX Coordinator, may in some cases determine that it must use Informal Resolution or Investigation/Formal Resolution to resolve the matter and take action against a Respondent even when the Complainant requests that no further procedures or disciplinary action be taken, in order to provide a safe and non-discriminatory environment for all College community members, including the Complainant.
  8. It is in the best interest of this community that as many Complainants as possible choose to report sexual misconduct to College officials, and that witnesses come forward to share what they know. To encourage reporting, an individual who reports sexual misconduct, either as a Complainant or a Third-Party Witness, will not be subject to disciplinary action by the College for his/her own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. The College may, however, initiate an educational or employment discussion or pursue other remedies regarding alcohol or other drugs.
- H. Internal Confidential Reporting
1. Certain College employees have been deemed Confidential Resources for purposes of this Procedure:
    - a. For Students (contact a counselor directly):

Rockville Counseling Department  
240-567-5063 or 240-567-4104

Germantown Counseling Department  
240-567-7734

Takoma Park/Silver Spring Counseling Department  
240-567-1480
    - b. For Employees:

Office of the Ombuds  
240-687-6199  
[ombuds@montgomerycollege.edu](mailto:ombuds@montgomerycollege.edu)

2. Confidential Resources are not considered to be Responsible College Employees—that is, upon receipt of a report of an alleged violation, Confidential Resources are not required to notify the Title IX Coordinator (or alternatively, if the sexual misconduct is by or against an employee, the Director of Employee Relations, Diversity and Inclusion) as described in Section IV.G. of this Procedure. As a result, an individual seeking support or guidance with respect to an alleged incident of sexual misconduct may contact any Confidential Resource, who will normally keep private the individual's identity and any other information concerning the incident.
3. Confidential Resources are not necessarily confidential or privileged as a matter of law and may need to make reports or a disclosure under certain circumstances. Moreover, as required by the Clery Act, Confidential Resources are required to report to relevant College administrators the occurrence of any crime (as defined by the Clery Act and its implementing regulations) of which they have knowledge. Such reporting for purposes of the Clery Act does not require a Confidential Resource to reveal an individual's identity.
4. Discussing an alleged incident of sexual misconduct with a Confidential Resource will not itself lead to an investigation or resolution of the incident as set forth in this Procedure. Confidential Resources do not have the authority to establish interim protective measures or resolve incidents through either Informal Resolution or Investigation/Formal Resolution, nor can they cause these processes to take place. Instead, their role is to provide support and guidance based on their training and professional experience. Individuals are therefore encouraged to report sexual misconduct to a Responsible College Employee to allow the College the opportunity to address and resolve the matter through the processes described in this Procedure.
5. The College recognizes that allegations of sexual misconduct are a sensitive subject for all persons involved and is committed to maintaining the privacy of the persons involved to the fullest extent possible, consistent with applicable law and the need for investigation and resolution.

I. External Confidential Reporting

Individuals who are seeking information and support may also contact the following organizations. Please note, however, that disclosures or reports made to any of these organizations may *not* be required to be kept confidential as a matter of law.

1. Resource for Employees

Faculty Staff Assistance Program  
1-800-935-9551 (24-hour hotline)  
1-800-855-288 TTY  
<http://www.fadv.com/eapsap/>

2. Community Resources for Students and Employees
  - a. Montgomery County Victim Assistance and Sexual Assault Program (VASAP)  
1301 Piccard Drive, Suite 4100  
Rockville, MD 20850  
240-777-4357 (24-hour crisis hotline)  
240-777-1347 TTY
  - b. VASAP Campus Liaisons:
 

Silver Spring/Takoma Park Campus  
Alicia Beltran, LCPC, Therapist  
240-777-1502

Germantown Campus  
Margaret Parsons, LCPC, Therapist  
240-777-1371

Rockville Campus  
Ginger Ebner, LCPC, Therapist  
240-777-1369

J. Retaliation

Policy 31001 prohibits retaliation (including any attempt to intimidate, threaten, coerce, or otherwise discriminate against any individual) by the College, or by anyone in the College community, against an individual because the individual reports sexual misconduct or participates in the College's processes related to an allegation of sexual misconduct as described in this Procedure. When the College is aware of possible retaliation, it will take immediate steps to investigate. Students or employees who commit retaliation in violation of Policy 31001 are subject to appropriate disciplinary action. A Complainant or other participant in any proceedings described in this Procedure who believes he or she has experienced retaliation in violation of Policy 31001 should immediately report such conduct to the Title IX Coordinator.

V. Resolution Process

A. Initial Title IX Assessment

1. Upon receipt of a report of an alleged violation under Section VIII.A of this Procedure, the Title IX Coordinator will conduct an Initial Title IX Assessment. The purpose of the Initial Title IX Assessment is to gather facts that will enable the Title IX Coordinator to assess:
  - a. the nature and circumstances of the allegation, including the severity of the conduct;
  - b. whether the conduct falls within the definition of sexual misconduct prohibited by Policy 31001 and governed by this Procedure;
  - c. the safety of the individual and the College community and the



- need for any interim protective measures;
  - d. the individual's expressed preference regarding resolution, including any request that no further action be taken;
  - e. any request from the individual for confidentiality;
  - f. the reported conduct for possible referral for a timely warning under the Clery Act; and,
  - g. in the event of an alleged violation by or against a College employee, whether the Title IX Coordinator or the Director of Employee Relations, Diversity and Inclusion should lead any subsequent resolution process.
2. If a report has been made by a Third-Party Witness or other individual with knowledge of sexual misconduct but no report has been made by the individual against whom the violation is alleged to have been committed, the Title IX Coordinator will make contact with the individual against whom the violation is alleged to have been committed. The Title IX Coordinator will provide the individual an opportunity to make his/her own report, and to become the Complainant for purposes of this Procedure. The individual is not obligated to make such a report or to participate in the Initial Title IX Assessment or any subsequent processes. In addition, the individual may request that the College not investigate or take any action against the Respondent, as described in Section V.B of this Procedure. If the individual elects not to report or participate in the Initial Title IX Assessment, the College will still conduct an Initial Title IX Assessment and decide upon an appropriate course of action.
3. The Title IX Coordinator will ensure that the individual against whom a violation is alleged to have been committed is provided with a copy of the College's 31001- Sexual Misconduct Policy and this Procedure. The Title IX Coordinator will also inform the individual (and, if the initial Complainant was a Third Party Witness or other individual with knowledge of the alleged misconduct, such Third Party Witness or other individual) in writing of:
- a. available College and community resources and services;
  - b. the right to a Support Person and an Attorney or Non-Attorney Advisor, and the roles of such persons;
  - c. the College's prohibition against retaliation, as described in Section IV.J. of this Procedure; and,
  - d. any other information as required by law.
4. The Title IX Coordinator will conduct a preliminary meeting with the individual against whom a violation is alleged to have been committed, assuming the individual has agreed to meet.

- a. If this individual is an employee of the College, or if the violation is alleged to have been committed by a College employee, the Director of Employee Relations, Diversity and Inclusion shall also participate in the preliminary meeting.
  - b. If the individual is a student of the College, the appropriate Associate Dean shall also participate in the preliminary meeting.
  - c. If the individual is not of the same gender as the Title IX Coordinator, and if the individual so requests, the Title IX Coordinator shall obtain the assistance of a qualified person of the same gender as the individual to assist in the processing of a report under this Procedure.
5. Where possible under the terms of Section V.B of this Procedure, the Title IX Coordinator will proceed consistent with the individual's expressed preferences, as described in such Section V.B. However, the College's ability to investigate fully and respond effectively to a report may be limited if the individual requests that his/her name not be disclosed to the Respondent or declines to participate in the process.
6. The Title IX Coordinator will ensure that the College provides the Complainant (or the individual against whom a violation is alleged to have been committed, if the Complainant is someone other than that individual) with appropriate interim protective measures as described in Section VI of this Procedure. Interim protective measures will be provided, as appropriate, even if the individual against whom a violation is alleged to have been committed elects to not make his/her own report or to otherwise participate in the Initial Title IX Assessment or any subsequent process under this Procedure.
7. An individual against whom a violation is alleged to have occurred may withdraw his/her report at any point during the Initial Title IX Assessment; however the College reserves the right to investigate all reports that pose an immediate or ongoing threat of harm to individuals, including the Complainant, or other members of the College community.
8. At the conclusion of the Initial Title IX Assessment, the Title IX Coordinator will determine the appropriate resolution route, including:
  - a. no further action;
  - b. Informal Resolution;
  - c. the initiation of an Investigation and Formal Resolution; or,
  - d. in the event of an alleged incident of sexual harassment (and that does not also constitute another type of sexual misconduct) by an employee against an employee, referral to the Director of Employee Relations, Diversity and Inclusion to investigate the incident under Procedure 31006CP, relating to alleged violations of the College's equal employment opportunity and non-discrimination policy.

B. Interim Protective Measures

1. With regard to every report made to the College under Section IV.B.2 of this Procedure, as part of the Initial Title IX Assessment in Section V.A. of this Procedure, the College will make an immediate assessment of whether interim measures are appropriate based on the particular circumstances. These steps may include interim protective measures to provide for the safety of the individual Complainant and the campus community when warranted. The College will make accommodations and provide protective measures if the Complainant requests them and they are reasonably available, regardless of whether the Complainant chooses to report a crime to campus security or local law enforcement. Interim measures may include, but are not limited to:

a. For students or employees

- 1) Providing information on available medical services;
- 2) Access to counseling services and assistance in setting up initial counseling appointment, both on- and off-campus;
- 3) Imposition of campus “No Contact Letter” (i.e., an official College directive that serves as a notice to an individual that they must not have verbal, electronic, written, or third-party communications with another individual);
- 4) Change in work schedule or job assignment or reassignment to other work group/team (for either Complainant or Respondent, as the College may determine in its discretion), or an alternative supervisor/management relationship;
- 5) Limit an individual or organization’s access to certain College facilities or activities pending resolution of the matter;
- 6) Voluntary leave of absence;
- 7) Emergency suspension or College-imposed leave, pursuant to the appropriate College Policy and/or Procedure;
- 8) Any other remedy that can be tailored to the involved individuals to achieve the goals of Policy 31001 – Sexual Misconduct; and,
- 9) Providing an escort to ensure safe movement between classes and activities.

b. Additional options for students

- 1) Rescheduling of assignment(s) and/or examination(s) (in consultation with appropriate faculty)
  - 2) Providing alternative course completion options (with the agreement of the appropriate faculty)
  - 3) Change in class schedule, including the ability to take an "incomplete," drop a course without penalty, or transfer sections (with the agreement of the appropriate faculty)
  - 4) Providing academic support services, such as tutoring
2. All individuals are encouraged to report to the Title IX Coordinator concerns about failure of another individual to abide by any restrictions imposed by an interim measure. The College will take immediate and responsive action to enforce a previously implemented measure.

C. Notice to Respondent

1. Except as described in sub-section C.3 below, upon a determination that the appropriate resolution route is Informal Resolution or the initiation of an Investigation/Formal Resolution, the Title IX Coordinator shall deliver, or cause to be delivered, a copy of the College's 31001- Sexual Misconduct Policy and Procedures to the Respondent and shall inform the Respondent in writing of:
  - a. Summary of the conduct at issue;
  - b. Potential violation(s) of Policy 31001 – Sexual Misconduct;
  - c. List of possible sanctions that the College may impose upon a finding that a violation has occurred;
  - d.
  - e. The identity of the Investigator (and any applicable assistant, such as the Director of Employee Relations, Diversity & Inclusion or Associate Dean);
  - f. Available College and community resources and services;
  - g. The right to a Support Person and an Attorney or Non-Attorney Advisor, and the roles of such persons; and,
  - h. The College's prohibition against retaliation, as described in Section IV.J. of this Procedure.
2. A summary of the report shall be simultaneously delivered to the appropriate Senior Vice President(s) and the General Counsel. If the initial report involves a College employee, a copy will be sent to the Associate Senior Vice President of Human Resources and Strategic Talent Management, the immediate supervisor of the Respondent, and other appropriate administrators. Delivery shall be made in a manner consistent with the confidentiality of the matter.

3. There are certain circumstances under which the Respondent will not receive notice as described above (e.g., if the individual against whom the misconduct is alleged to have been committed requests that the College take no further action, and the Title IX Coordinator determines that would be an appropriate resolution route, as described in Section V.E.3. or if the Title IX Coordinator determines that the alleged conduct does not constitute sexual misconduct as defined in this Procedure and that no further action is necessary). Under certain circumstances (e.g., if the individual against whom the misconduct is alleged to have been committed requests that his or her name not be used and the Title IX Coordinator agrees to such request), the Respondent may receive a form of notice that does not identify the individual against whom the misconduct is alleged to have occurred.

D. Roles of the Support Person, Attorney or Non-Attorney Advisor

1. Throughout the processes described in this Procedure, the Complainant and the Respondent(s) may have a Support Person present at any part of the processes related to a report under this Procedure. The Support Person may be anyone age eighteen (18) or older, of the individual's choosing, who is not a Complainant, Respondent, or Third-Party Witness to the alleged misconduct, and who wishes to assist the Complainant or Respondent (as applicable) by providing emotional and/or moral support.
2. In the event that either the individual against whom the misconduct is alleged to have been committed or the Respondent is a College employee, such individual's Support Person may not be another College employee.
3. The Support Person is a silent and non-participating presence who is there solely to observe and provide moral support in a way that does not disrupt or delay the process. The Support Person may not make any statement, except to ask for a short recess if the Complainant or Respondent requires some time to compose him or herself or collect his or her thoughts. The Title IX Coordinator has the right at all times to determine what constitutes appropriate behavior on the part of a Support Person and whether the Support Person may remain present.
4. Absent extenuating circumstances, witnesses and others involved in an investigation are not entitled to have a Support Person present.
5. Throughout the processes described in this Procedure, the Complainant and the Respondent may have an Attorney or Non-Attorney Advisor present. In the event that either the individual against whom the misconduct is alleged to have been committed or the Respondent is a College employee, such individual's Attorney or Non-Attorney Advisor may not be another College employee.
6. The role of the Attorney or Non-Attorney Advisor is limited to providing advice and consultation directly to the Complainant or Respondent (i.e., the Attorney or Non-Attorney Advisor is not to take an active representation role on behalf of the Complainant or Respondent, as an Attorney would do in a formal legal proceeding). The Attorney or Non-

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Attorney Advisor may not speak while present during any process under this Procedure or otherwise delay or interfere with the process. If the Complainant or Respondent elects to have an Attorney or Non-Attorney Advisor present, the Attorney or Non-Attorney Advisor's presence is at the Complainant's or Respondent's, as applicable, own initiative and expense, and it is the Complainant's or Respondent's, as applicable, responsibility to communicate and share information with the Attorney or Non-Attorney Advisor.

7. The College has no obligation to recognize or enforce agreements (e.g., as negotiated by the Complainant and Respondent's respective Attorneys) between a Complainant and Respondent(s) outside of this Procedure.

E. Informal Resolution

Informal Resolution is a remedies-based, non-judicial style approach designed to address allegations of sexual misconduct without taking disciplinary action against a Respondent. Informal Resolution is not appropriate for resolving allegations of all types of sexual misconduct.

- I. Participation in Informal Resolution is voluntary, and either the Complainant or the Respondent may request to terminate Informal Resolution and pursue Investigation/Formal Resolution at any time, including if Informal Resolution is unsuccessful at resolving the report.
- II. Resolutions available as part of Informal Resolution will be tailored to the individual circumstances. They may include those interim protective measures identified in Section V.B if determined to be appropriate. Other potential resolutions include targeted or broad-based educational programming or training; facilitating a meeting between the Complainant and Respondent (in cases that do not involve allegations of sexual assault or other serious acts of violence); and any other resolution that can be tailored to the individuals involved to achieve the goals of the 31001- Sexual Misconduct Policy and this Procedure.
- III. In some forms of Informal Resolution, measures may be taken that will focus on supporting the Complainant with no participation or involvement by the Respondent. In other forms of Informal Resolution, the Respondent may agree to participate. Depending on the form of Informal Resolution used, it may be possible to maintain anonymity.
- IV. The College will not compel a Complainant to engage in mediation, to directly confront the Respondent, or to participate in any particular form of Informal Resolution. Mediation, even if voluntary, may not be used in cases involving sexual assault.
- V. If a mutually agreed upon resolution is achieved, the report will be considered resolved as it pertains to the College.
- VI. The Title IX Coordinator will maintain records of all reports and conduct referred for Informal Resolution. Informal Resolution will typically be

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completed within sixty (60) days after the initial report.

F. Investigation/Formal Resolution

If at the conclusion of the Initial Title IX Assessment, the Title IX Coordinator determines the appropriate resolution route is initiation of an Investigation/Formal Resolution, the Title IX Coordinator shall initiate a prompt, thorough, and impartial Investigation. The Investigation is designed to provide a fair and reliable means of gathering relevant information.

1. Investigator. The Investigation will be conducted by the Title IX Coordinator or, at the discretion of the Title IX Coordinator, the College may engage an external investigator whenever, in the exercise of the Title IX Coordinator's judgment, in coordination with other appropriate administrators, doing so will best serve the fair and equitable resolution of the report. In the case of sexual misconduct allegedly committed by or against a College employee and investigated under this Procedure, the Title IX Coordinator (or the external investigator) will consult during the investigation with the Director of Employee Relations, Diversity and Inclusion. The person responsible for conducting the investigation—whether the Title IX Coordinator or an external investigator—is hereinafter referred to as the Investigator.
2. Consolidation of Investigations. At the discretion of the Investigator, multiple reports may be consolidated against a Respondent(s) in one Investigation, if the evidence related to each incident would be relevant and probative in reaching a determination on the other incident.
3. Participation of the Complainant and Respondent. All members of the College community, including students, faculty, and other College employees, are expected to cooperate with the Investigator. The Complainant and the Respondent are expected to participate in the Investigation.

A Complainant may decide that he or she no longer wants to pursue the report or to participate in the resolution process. However, such a request does not necessarily relieve the College of its Title IX obligation to investigate reports of sexual misconduct. Therefore, the College will determine whether it must continue an Investigation even if the Complainant withdraws his or her involvement.

4. Timeline for Formal Resolution.
  - a. The Investigator will use his or her best efforts to complete the Investigation in a timely manner, balancing principles of thoroughness and fairness with promptness, with a goal to conclude an Investigation within sixty (60) days from its commencement.
  - b. The time frame for completion of any step in the Investigation/Formal Resolution may be extended for good cause as necessary – for example, to ensure the integrity and

- completeness of the Investigation, to comply with a reasonable request by law enforcement, to accommodate availability of witnesses, or to account for the complexities of a particular case (e.g., number of Complainants, Respondents, and/or witnesses; volume of information collected).
- c. An Investigation may take longer than sixty (60) days if the Investigation occurs in whole or in part during a break in the College's academic calendar; however, the College will make every effort to conduct an Investigation during these breaks unless doing so would sacrifice witness availability or otherwise compromise the process.
  - d. The Complainant and Respondent may receive periodic updates regarding the status of the investigation, either upon request or by the College without a request. If the Investigator needs more than sixty (60) days to conduct an Investigation, the Investigator or his/her representative will notify the Complainant and Respondent in writing of the delay and the reason for the delay.
  - e. If, in the course of the Investigation, additional facts emerge that were not contained in the original report but which nonetheless warrant investigation, the Investigator may include such facts in the Investigation and the resulting Investigative Summary without initiating a separate investigation (e.g., preparing a new Notice of Investigation, soliciting additional Written Statements, etc.).
5. Notice of Investigation. The Investigator will send the Complainant and the Respondent(s) a written Notice of Investigation.
- A. The Notice of Investigation will generally be issued within five (5) days after the Investigator's receipt of the conclusion of the Initial Title IX Assessment and will include the following:
    - 1) Summary of the conduct at issue;
    - 2) Potential violation(s) of Policy 31001 – Sexual Misconduct;
    - 3) List of possible sanctions that the College may impose upon a finding that a violation has occurred;
    - 4) The identity of the Investigator (and any applicable assistant, such as the Director of Employee Relations, Diversity and Inclusion or Associate Dean);
    - 5) Available College and community resources and services;
    - 6) The right to a Support Person and an Attorney or Non-Attorney Advisor, and the roles of such persons; and,
    - 7) The College's prohibition against retaliation, as



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described in Section IV.J. of this Procedure.

- b. The Notice of Investigation will invite the Complainant and Respondent(s) to meet with the Title IX Coordinator separately and invite each to identify any Third-Party Witnesses with information relevant to the complaint. The Complainant, Respondent(s), and any Third-Party Witnesses may be invited to submit a Written Statement, to include any and all information deemed by the individual to be relevant to the investigation.
  - c. The Complainant or the Respondent may submit a written request to the Title IX Coordinator, with a copy to the Senior Vice President for Administrative and Fiscal Services, that the Investigator excuse him/herself from the Investigation. The grounds for such request are limited to: (1) claim of bias, (2) conflict of interest, and (3) inability to be fair or impartial. The request must clearly state the grounds to support a claim of bias, conflict of interest, or an inability to be fair and impartial. This challenge must be raised within two (2) days after receipt of the Notice of Investigation. The Senior Vice President for Administrative and Fiscal Services shall grant or deny the recusal request within two (2) days after receipt of the request.
6. Meeting with the Complainant and Respondent. The Investigator shall meet separately with the Complainant, the Respondent(s), and any Third-Party Witness. As described in Section V.D. above, the Complainant and the Respondent(s) may be accompanied at any such meeting by a Support Person and/or an Attorney or Non-Attorney Advisor.
- A. The Complainant and Respondent each will be provided with timely notice (i.e., three (3) days in advance) of any meeting that he/she is invited to attend.
  - B. The Complainant and Respondent each can request to have a meeting with the Investigator rescheduled. Absent extenuating circumstances, requests to reschedule must be submitted to the Investigator with an explanation for his or her request at least 24 hours prior to the date of the scheduled meeting.
7. Collection of Physical and Documentary Evidence. The Investigator will gather any available physical or documentary evidence (e.g., communications between the Complainant and Respondent such as e-mail messages or text messages). E-mails sent or received on College e-mail systems by College employees may be obtained by appropriate College officials without the employee's consent, pursuant to applicable College policies, including the 66001- Acceptable Use of Information Technology Policy. The Investigator shall also have access to personnel information about College employees and to the educational records of students, in whole or in part, when relevant. Personal information obtained from educational records of students shall not, however, be disclosed to third parties other than: (a) the College's General Counsel, the appropriate Senior Vice President, President, and the appropriate

Administrative Official(s) who may require access in order to implement a Corrective Action, or (b) as required by law.

8. Assurances to Persons Involved, Safeguarding of Privacy. All individuals, including the Complainant, the Respondent, and any Third-Party Witnesses, will be treated with appropriate sensitivity and respect. The Investigator will safeguard the privacy of the individuals involved in a manner consistent with law and College policy and the need to investigate the matter.
9. Findings of the Investigator. At the conclusion of the investigation, the Investigator shall submit simultaneously to the Complainant and each Respondent a written Investigative Summary. The Investigative Summary will contain: (a) a summary statement of Investigative Findings, (b) a Determination regarding whether under a preponderance of the evidence standard (i.e., it is more likely than not) the Respondent(s) has/have violated the College's Sexual Misconduct Policy, and, if applicable, (c) a recommended sanction/Corrective Action, to be contained in a Letter of Outcome.

In making his/her Investigative Findings and reaching a Determination, the Investigator shall take into account whether there are prior substantiated reports of misconduct by the Respondent(s). Prior Investigative Findings/Determinations may not be used to substantiate the current report, but may be considered by the Investigator for other purposes, such as assessing the credibility of the Respondent(s) and/or ascertaining the existence of a pattern of conduct by the Respondent(s). Information regarding prior reports will not be made available to anyone under these Procedures, except as permitted or required by law.

- a. A copy of the Investigative Summary shall also be sent to the appropriate unit administrator(s) of any individual(s) found to have violated College policy, the appropriate Senior Vice President, the campus Vice President and Provost, the General Counsel, and the Director of Public Safety and Emergency Management.
- b. If the Investigator finds that there has been a violation by a student, a copy of the Investigative Summary shall be forwarded to the appropriate Dean or the appropriate campus Vice President and Provost, and other appropriate administrators.
- c. If the Investigator finds that an employee has violated the Policy, a copy of the Investigative Summary shall be forwarded to the Associate Senior Vice President of Human Resources and Strategic Talent Management, the Respondent's immediate supervisor, and other appropriate administrators.
- d. If the Investigator finds there has been a violation by a participant in a College program or activity, other than an employee or student, or by a contractor, vendor, or other non-student or non-employee, a copy of the Investigative Summary shall be sent to the administrator responsible for the College

program, contract, or activity.

A finding of the Investigator that no violation of the 31001 - Sexual Misconduct Policy occurred does not prevent discipline of the Respondent for inappropriate or unprofessional conduct under other applicable College policies and procedures. Thus, even if no violation has been found, the Investigator may recommend Corrective Action as set forth in Section VII below, and may send a copy of the Investigative Summary to the appropriate individuals as described above. Unless otherwise specifically provided herein, no provision of this Procedure shall be construed as a limitation on the authority of a disciplinary authority to initiate disciplinary action under other applicable College policies and procedures.

10. Letter of Outcome

- a. If the Investigator concludes that there has been a violation of the College's 31001-Sexual Misconduct Policy (i.e., issues an Investigative Summary containing a Determination to that effect), s/he will recommend Corrective Action to be taken to sanction the Respondent(s) and provide appropriate remedies to the Complainant. The recommendation for any Corrective Action will be formulated in consultation with the appropriate administrators/disciplinary authority, including: (a) where the Respondent is an employee, the Director of Employee Relations, Diversity and Inclusion and the Associate Senior Vice President for Human Resources, Development and Engagement, or (b) where the Respondent is a student, the Associate Dean. Any recommended Corrective Action shall be documented in a separate writing and appended to the Investigative Summary.
- b. In keeping with the College's commitment to being a learning and working environment free from sexual misconduct, the College may impose sanctions tailored to the facts and circumstances of each case, the impact of the misconduct on the Complainant and the College community, and the accountability of the Respondent. The imposition of sanctions is designed to eliminate prohibited conduct, prevent its recurrence, and remedy its effects, while supporting the College's mission.
- c. Sanctions may be imposed individually or in combination and may include, but are not limited to, any action instituted by the College which is designed to remedy or reform any behavior, conduct, practice, or activity that is deemed to be in violation of College policy 31001-Sexual Misconduct. All sanctions shall be consistent with the College's applicable policies, depending on the identity of the Respondent. A list of all possible sanctions the College may impose is included in Appendix A of this Procedure.
  - 1) Students: [Student Code of Conduct \(42001\)](#),
  - 2) Employees: the College's [Disciplinary Action and Suspension Policy \(34002/32002CP\)](#), the College's

[Discharge of Administrative, Associate and Support Staff Policy \(34003/34003CP\)](#), the [Personnel Grievance Process for Employees \(34101/34101CP\)](#), the grievance procedure under applicable [collective bargaining procedures](#), or any other applicable processes.

In the event of sexual misconduct by a third party against a College student or employee, the College will take appropriate action within its control to address the misconduct and prevent its occurrence, including but not limited to requesting appropriate action by an employer of the third party if the latter's relationship to the College is through his or her employer and referring to local law enforcement to issue a "No Trespass" notice denying access to the College's public buildings and grounds when warranted.

- d. In addition to any of the sanctions described above, the Investigator may also recommend reasonable remedies to address the effects of the misconduct on the Complainant, ensure the Complainant's safety and well-being, maximize the Complainant's educational and/or employment opportunities, and prevent the recurrence of misconduct by the Respondent. Such remedies include, but are not limited to, the interim protective measures identified in Section V.B. (for the Complainant), and mandatory training and/or counseling sessions (for the Respondent). The Investigator may also identify and recommend remedies to address broader effects of the misconduct on the College community. The Title IX Coordinator will consider the appropriateness of recommended remedies, including any interim protective measures identified in Section, V.B. on an ongoing basis (e.g., extending or making permanent any interim protective measures, or implementing additional measures tailored to achieve the goals of the College's 31001 - Sexual Misconduct Policy).

#### VI. Procedures for Review of the Findings, Recommendations of the Investigator

- A. Subject to the provisions below, the Investigative Summary (including the Investigative Findings and Determination) and recommended Corrective Action shall be final unless either Complainant or the Respondent(s) requests, in writing, an appeal. The Investigative Summary shall provide simultaneous written notification to the Complainant and Respondent(s) of information about the College's procedures to appeal. Notwithstanding the foregoing, a third-party (e.g., contractor, vendor, etc.) found to have violated the 31001 - Sexual Misconduct Policy does not have a right to appeal the contents of the Investigative Summary or any recommended Corrective Action.
- B. The grounds for appeal are limited to:
  1. A procedural error or omission occurred that significantly affected the Investigative Findings and/or Determination (e.g., substantiated bias, material deviation from established procedures, etc.);

2. To consider new evidence, unknown or unavailable during the original Investigation, that could substantially impact the Investigative Findings and/or Determination (a summary of this new evidence and its potential impact must be included in the written statement of appeal described in Section VI.); and,
  3. The recommended Corrective Actions are substantially disproportionate to the severity of the violation or fall outside the range of sanctions the College has designated for purposes of its 31001 - Sexual Misconduct Policy (this ground is reserved for sanctions against students who have been found in violation of the 31001 - Sexual Misconduct Policy).
- C. The Complainant or the Respondent(s) shall have ten (10) days after receipt of the Investigative Summary to state in writing the grounds for appeal and the specific reasons why the Investigative Findings, Determination, and/or recommended Corrective Action should be reversed or modified. Appeals must be filed with the designated Senior Vice President or designee, hereinafter collectively referred to as the Reviewing Official.
- D. The designated Senior Vice President may elect to serve as the Reviewing Official or designate another administrator to serve as the Reviewing Official. In any case, the Reviewing Official shall not have a conflict of interest or bias for or against the Complainant or the Respondent. The Complainant or the Respondent may submit a written request to the Reviewing Official, with a copy to the Senior Vice President for Administrative and Fiscal Services, that the Reviewing Official excuse him/herself. The grounds for such request are limited to: (1) claim of bias, (2) conflict of interest, and (3) inability to be fair or impartial. The request must clearly state the grounds to support a claim of bias, conflict of interest, or an inability to be fair and impartial. This challenge must be raised within two (2) days after receipt of the Investigative Summary. The Senior Vice President for Administrative and Fiscal Services shall grant or deny the recusal request within two (2) days after receipt of the request.
- E. Upon receipt of an appeal, the Reviewing Official or his/her designee shall notify the non-appealing person or persons, the Title IX Coordinator, and those individuals who received a copy of the Investigative Summary pursuant to Section V.F.9.a., above.
- F. The Reviewing Official or his/her designee will generally be limited to a review of the Investigative Summary, the investigative record (i.e., the materials collected by the Investigator in the course of conducting the Investigation), the College's 31001-Sexual Misconduct Policy, and any other appropriate College policy and the Respondent's and/or Complainant's written appeal. The Reviewing Official, or his/her designee, may, in his/her sole discretion, ask the Investigator to clarify the Investigative Summary, or perform additional investigation concerning any new evidence identified in the appeal or to assist in determining whether there was, in fact, a procedural error, if such Reviewing Official or his/her designee believes such an alleged error may have affected the outcome of the Investigation and the Investigative Findings/Determination by the Investigator.
- G. If the Reviewing Official or his/her designee determines in the course of his/her review that there was a procedural error that substantially affected the outcome of the Investigation to the material prejudice of the person or persons filing the

appeal, or that other circumstances exist requiring additional Investigation, the Reviewing Official shall order the Investigation to be reopened subject only to direction/supervision by and any terms/conditions imposed by the Reviewing Official (including, in any case in which substantial bias was present, appointment of a new Investigator). No disciplinary action may be carried out prior to the Reviewing Official or his/her designee expressly so directing in his/her final written determination.

- H. Within fifteen (15) days after the Reviewing Official receives the appeal, the Reviewing Official or her or his designee shall issue a final written determination either upholding the Investigative Findings and Determination and recommended Corrective Action of the Investigator or reversing the Investigative Findings and/or Determination and/or recommended Corrective Action, and providing specific reasons for such reversal. The written determination of the Reviewing Official shall be final and will be forwarded simultaneously to the Complainant, Respondent(s), the Title IX Coordinator, appropriate Senior Vice President, campus Vice President and Provost, and the General Counsel.
1. In the case of an appeal involving a student (i.e., in which either the Complainant and/or Respondent is a student), a copy of the written determination of the Reviewing Official shall be forwarded to the appropriate Dean or to the appropriate campus Vice President and Provost.
  2. In the case of an appeal involving a staff member (i.e., in which either the Complainant and/or Respondent is a staff member), a copy of the written determination of the Reviewing Official shall also be forwarded to the Director of Employee Relations, Diversity and Inclusion, the Associate Senior Vice President of Human Resources and Strategic Talent Management, the employee's immediate supervisor, and other appropriate administrators.
  3. In the case of an appeal involving a faculty member (i.e., in which either the Complainant and/or Respondent is a faculty member), a copy of the written determination of the Reviewing Official shall be forwarded to the Director of Employee Relations, Diversity and Inclusion, the Associate Senior Vice President of Human Resources and Strategic Talent Management, the Senior Vice President for Academic and Student Services, the Instructional Dean who has supervisory authority over the faculty member's academic department, and other appropriate administrators.

VII. Implementation of Corrective Action

- A. If a notice of appeal is not submitted to the appropriate Senior Vice President in accordance with Section VI. above, the appropriate administrators/disciplinary authority shall act to implement the recommended Corrective Action as soon as possible, but no later than twenty (20) days after the appropriate administrators/disciplinary authority receives a copy of the Investigative Summary.
- B. If a notice of appeal is submitted to the appropriate Senior Vice President, the appropriate unit administrator/disciplinary authority shall act to implement

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recommended Corrective Action as soon as possible but no later than twenty (20) days after the appropriate unit administrator/disciplinary authority receives a copy of the Reviewing Official's final written determination containing the final recommended Corrective Action.

- C. Notwithstanding the foregoing, in cases where the Complainant or Respondent is an employee covered by a collective bargaining agreement, the employee may seek review of the recommended Corrective Action (or, if an appeal has been filed, the Reviewing Official's final written determination) under any grievance procedures available under the employee's collective bargaining agreement. If both Complainant and Respondent are employees covered by different collective bargaining agreements, the grievance procedures in the agreement that covers the party challenging the decision shall be used. If a Complainant or Respondent covered by a collective bargaining agreement seeks review of the recommended Corrective Action through the applicable agreement's grievance procedure, he/she may not also appeal the recommended Corrective Action under this Procedure. However, a Complainant or Respondent may appeal a recommended Corrective Action under this Procedure and then seek review of the Reviewing Official's final written determination under the grievance procedure of the applicable collective bargaining agreement.
- D. If the Investigator makes an Investigative Finding or the Reviewing Official makes a final written determination that there has been a violation of the College's policy with respect to a grade awarded to a student, the Investigator or the Reviewing Official shall make no determination with respect to the Corrective Action to be taken regarding a specific grade assignment. The Investigative Finding or final written determination shall be forwarded to the Complainant, Respondent(s), and the appropriate Dean, who shall select a review committee in accordance with the procedures stated in the Academic Regulations for the review of allegations of arbitrary and capricious grading. The Committee, which is established pursuant to the [53001-Academic Regulations](#) to review allegations of arbitrary and capricious grading, shall have no authority to reverse the Investigative Finding or Determination of the Investigator or the final written determination of the Reviewing Official, and shall confine its consideration to a determination of the appropriate Corrective Action with respect to the grade. The Committee shall, within twenty (20) days after appointment of the Committee and its receipt of the Initial Finding and Determination or final written determination, forward to the Investigator and the Reviewing Official, Complainant, and Respondent(s) a written recommendation as to the appropriate Corrective Action with respect to the grade.

Within ten (10) days after receipt of the written recommendation of that Committee, the Senior Vice President for Academic Affairs and the Senior Vice President for Student Services shall review the recommendation of the Committee and, upon completing such review, shall issue a final written determination of the Corrective Action with respect to the grade she or he determines to be appropriate for such violation (which she/he shall implement), and a copy of which shall be forwarded to the Complainant, Respondent(s), Reviewing Official, and Investigator.

#### VIII. Notice of Final Outcomes

Once all of the above processes are concluded, whatever decision is made regarding Investigative Findings, Determinations, and/or Corrective Action is the final administrative decision of the College in the matter. The Title IX Coordinator shall ensure that the Complainant and Respondent are notified simultaneously and in writing of the final resolution.

**IX. Records**

- A. The Title IX Coordinator will retain records of all reports, regardless of whether the matter is resolved by means of Initial Title IX Assessment, Informal Resolution or Investigation/Formal Resolution. Reports resolved by means of Initial Title IX Assessment or Informal Resolution are not part of a student's conduct file or academic record or of an employee's labor relations record.
- B. Affirmative findings of responsibility in matters resolved through Investigation/Formal Resolution are part of a student's conduct record and an employee's labor relations record. Such records shall be used in reviewing any further conduct, or developing sanctions, and shall remain a part of a student's conduct record or an employee's labor relations record.
- C. Generally suspension, demotion, and discharge are permanently noted in an employee's labor relations record. The labor relations records of employees who have been suspended, demoted, or discharged are maintained in the Associate Senior Vice President for Human Resources and Strategic Talent Management Office according to the College's published retention schedule. Further questions about record retention should be directed to the Associate Senior Vice President for Human Resources and Strategic Talent Management Office.
- D. Generally suspension, expulsion, and withdrawal are permanently noted on a student's transcript. The conduct files of students who have been suspended or expelled from the College are maintained in the Senior Vice President of Student Services Office indefinitely. Conduct files of students who have not been suspended or expelled are maintained in the Dean of Students office for no fewer than seven years from the date of the incident. Further questions about record retention should be directed to the Senior Vice President for Student Services office.

**X. Time Limits**

Consistent with the provisions of the American Association of University Professors (AAUP) faculty and the Service Employees International Union (SEIU) part-time faculty collective bargaining agreement, whenever used in this procedure, the word "days" shall mean all days during the academic year or summer terms other than Saturdays, Sundays, and days designated as holidays or recess days on the academic calendar.

Consistent with the provisions of the American Federation of State, County, and Municipal Employees (AFSCME) staff collective bargaining agreement, whenever used in this procedure, the word "days" shall mean all days during the calendar year other than Saturdays, Sundays, and days designated as holidays by Management.

The Director of Employee Relations, Diversity and Inclusion and the Senior Vice Presidents or designee(s) may exercise reasonable discretion to adjust the time limits for the investigation and/or the issuance of the Investigative Summary, depending upon the



nature and complexity of the complaint, or when such action is deemed necessary or appropriate.

XI. Receipt of Notification

Whenever, under these procedures, individuals must be notified in writing, a copy shall be served in person, by certified, return receipt requested mail to the address that is kept on file at the College, or via email at the individual's request. For purposes of computing any time frames under these procedures, where service is by US mail, the date of service shall be considered to be the third day after the postmarked date of the letter. It is the responsibility of the individual to ensure that the College has their current address on file.

- XII. Pursuant to the President's authority to establish the foregoing Procedure, the President may amend, modify, or supplement this Procedure, or replace the Procedure in whole or in part, at any time and from time to time.

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Administrative Approval: June 29, 2015; October 28, 2015

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**Appendix A: Possible Sanctions Available Under College Policies and Procedures**

**Employee Disciplinary Action and Suspension (34002)**

The kinds of disciplinary action are as follows:

- A. Oral Warning: A private discussion held between the supervisor and the employee to discuss the employee's problem and to afford the employee an early opportunity to correct the problem.
- B. Written Warnings or Written Reprimands: Written disciplinary documentation of an employee's problem which needs to be corrected.
- C. Disciplinary Suspension: The required unpaid absence of an employee from work for a serious violation or offense. Suspensions should be for a specified period of time, related to the seriousness of the offense.
- D. Disciplinary Demotion: The involuntary movement of an employee from one position to another position at a lower pay grade as a result of the employee's poor performance or disciplinary action.

**Discharge of Administrative, Associate, and Support Staff (Policy 34003)**

Any employee whose behavior, act(s) or performance is unacceptable shall be subject to dismissal for cause.

**Student Code of Conduct (Procedure 42001)**

The following sanctions may be imposed on any student or student organization found to have violated the Student Code of Conduct:

- A. Dismissal. Permanent denial of the privilege of enrollment at the College.
- B. Emergency Suspension. A suspension imposed prior to a discipline review or appeal when necessary to ensure the safety and well-being of the members of the College. This action is recommended by the campus Dean of Student Development and approved by the Vice President/Provost or designee. Upon the completion of the discipline review, additional sanctions may be imposed.
- C. Suspension. Denial of the privilege of enrollment for a specified period of time after which the student is eligible to return. During this time the student cannot qualify for graduation, register for or attend classes or other College functions.
- D. Disciplinary Probation. Continued enrollment at the College but only under special conditions for a specified period of time. Conditions may include exclusion from a particular area of the College, participation in the specific activities of the College, or denial of related privileges and/or services. Misconduct during the probationary period or violation of any conditions of the probation may result in more severe disciplinary action, up to and including dismissal.
- E. Restitution. Required reimbursement for damage to or misappropriation of property. This may take the form of appropriate services or other compensation.

- F. Community Service. Requires a set number of hours of uncompensated service to the College or a community agency.
- G. Warning. Issuance of a written warning, admonition, or reprimand.
- H. Permanent Record. Entries regarding the disciplinary conference will be added to the student's permanent record at Montgomery College. These records will be kept for five years and will be disclosed only in accordance with applicable federal and state law. These records will be expunged if a student is found not to have violated the Code of Conduct.
- I. Administrative Hold. Placing a hold on all student academic files so that the student may not register. This sanction may be imposed where a student withdraws from the College prior to or during disciplinary proceedings.
- J. Organizational Sanctions. Sanctions for organizational misconduct may include revocation of the use of College premises or privileges for a specified period of time, revocation or denial of recognition or registration, or suspension of activities or events, as well as other appropriate sanctions.