

# MONMOUTH UNIVERSITY POLICIES AND PROCEDURES

**Policy Name:** Title IX Sexual Harassment Policy for the Monmouth University Community

**Original Issue Date:** August 14, 2020

**Revision Date:** October 5, 2021, January 10, 2023

**Page 1 of 24 Pages**

**Issued by:** Office of the General Counsel

**Approved by:** President and Direct Reports

In response to the Federal Title IX Final Rule which was issued on May 6, 2020 and effective on August 14, 2020, Monmouth University has adopted the following policy and procedures for addressing Title IX and Sexual Harassment matters as defined below. Should you have an incident of sexual misconduct that does not meet the definitions included below, please refer to the appropriate university policy: Sexual Misconduct Policy and Procedures in the Student Handbook which can be found here <https://www.monmouth.edu/student-life/documents/student-handbook.pdf/>, [Procedures for Reporting and Resolving Complaints of Discrimination and Harassment Against Non-Faculty Employees](#) or the [Procedures for Reporting and Resolving Complaints of Discrimination and Harassment Against Faculty](#).

Please contact the Office of Equity and Diversity to speak with the Title IX Coordinator or the Deputy Title IX Coordinator for questions and clarifications and to help determine which policies may apply to a specific situation.

Nina Anderson, Title IX Coordinator,  
Director of the Office of Equity and Diversity  
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Amy Arlequin, Deputy Title IX Coordinator and Clery Compliance Officer  
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400 Cedar Avenue  
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West Long Branch, NJ 07764  
Office Phone: 732-571-7577  
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**This policy is subject to be changed without prior notice, if necessary to maintain compliance with State and Federal laws and regulations.**

**I. Non-Discrimination Statement:**

Monmouth University supports equal opportunity in every phase of our operation including recruitment, admission, educational programs, and employment practices of recruitment, hiring, promotion, reclassification, transfer, compensation, benefits, termination, layoff and return from layoff, social and recreational programs and any other aspects of education or employment. The university does not discriminate on the basis of race, color, creed, ancestry, national origin, nationality, sex (including pregnancy and sexual harassment), affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, marital status, domestic partnership or civil union status, age, liability for military service, protected veteran status, or status as an individual with a mental or physical disability, including AIDS and HIV-related illnesses or any other protected category under applicable local, state or federal law. The university also complies with all major federal and state laws and executive orders requiring equal employment opportunity and/or affirmative action.

Monmouth University affirms the right of its faculty, staff, and students to work and learn in an environment free from discrimination and harassment, including sexual harassment, and has developed procedures to be used to resolve discrimination or harassment complaints. A copy of the university wide policy on discrimination and harassment, including sexual harassment, which describes the procedures for resolving such complaints, may be obtained from:

The Office of Equity and Diversity  
400 Cedar Avenue Great Hall, Room 304  
West Long Branch, NJ 07764  
Phone: 732- 571-7577 Fax: 732-263-5140  
Web: [www.monmouth.edu/equity-and-diversity/discrimination-and-harassment/](http://www.monmouth.edu/equity-and-diversity/discrimination-and-harassment/)

Additionally, inquiries may be made externally to:  
Office of Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-1100  
Customer Service Hotline Phone: 800-421-3481 Fax: 202-453-6012  
TDD: 877-521-2172 Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: [www2.ed.gov/about/offices/list/ocr/index.html](http://www2.ed.gov/about/offices/list/ocr/index.html)

Equal Employment Opportunity Commission (EEOC) Contact: [www.eeoc.gov](http://www.eeoc.gov)

## **II. Jurisdiction:**

This policy applies to prohibited conduct that occurs on campus, on university owned or controlled off campus property, or during a university sanctioned program or activity against a person in the United States.

## **III. Title IX Coordinator:**

Monmouth University has a designated Title IX Coordinator and a Deputy Title IX Coordinator. These employees are responsible for compliance with Title IX of the Education Amendments of 1972, which prohibits sex discrimination, including sexual harassment, gender-based harassment and sexual violence, in education programs.

**Title IX Coordinator:** Nina Anderson, [nanderso@monmouth.edu](mailto:nanderso@monmouth.edu)

**Deputy Title IX Coordinator:** Amy Arlequin, [aarlequi@monmouth.edu](mailto:aarlequi@monmouth.edu)

**Campus Location:** Great Hall, Room 304

**Office Telephone:** 732-571-7577

The names and contact information for the Title IX/Deputy Title IX Coordinators can also be found at the following page: <http://monmouth.edu/resources/HR/OED/staff.asp>

## **IV. Prohibited Conduct:**

This policy prohibits the following specified conduct:

- 1. Sexual Harassment** is conduct on the basis of sex that satisfies one or more of the following:
  - a. An employee of the university making unwelcome sexual conduct a condition of providing aid, benefit or service to a student (i.e. An employee giving a student a bad grade for refusing to date them. Quid Pro Quo sexual harassment);
  - b. Unwelcome conduct that a reasonable person would find so severe, pervasive and objectively offensive that it denies a person equal access to the university's educational program or activity; or
  - c. Sexual Assault as defined by the Clery Act (Please refer to

Section V, “Definitions” below).

- i. Rape
- ii. Fondling
- iii. Statutory Rape
- iv. Incest

2. **Dating Violence** as defined by the Violence Against Women Act (VAWA) (Please refer to Section V, “Definitions” below).
3. **Domestic Violence** as defined by the Violence Against Women Act (VAWA) (Please refer to Section V, “Definitions” below).
4. **Stalking** (as defined by the Violence Against Women Act (VAWA) (Please refer to Section V, “Definitions” below).
5. **Retaliation**

## **V. Definitions:**

**1. Actual Knowledge:** Actual knowledge means notice of sexual harassment or allegations of sexual harassment to the university’s Title IX Coordinator or any university official who has the authority to institute corrective measures on behalf of the university.

**2. Sexual Harassment:** Conduct, on the basis of sex, which satisfies one or more of the following:

- (i) An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
  - a. This includes not only express communications but also situations where the quid pro quo nature of the incident is implied from the circumstances.
  - b. Quid pro quo harassment does not cover conduct by non-employees.
  - c. Unwelcome conduct is based on the Complainant(s)’s subjective statement that the Complainant(s) found the conduct to be unwelcome.
- (ii) Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person

equal access to the educational institution's education program or activity; or

a. This requires a subjective element (unwelcome conduct) and an objective element (reasonable person).

b. Unwelcome conduct may only be actionable under Title IX where the seriousness (determined by a reasonable person to be so severe, pervasive, and objectively offensive that it negatively impacts equal access) jeopardizes educational opportunities.

(iii) Sexual assault (as defined in the Clery Act), or dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).

1. **Sexual Assault** (as defined by the Clery Act):

a. **Rape:** 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.

b. **Fondling:** 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 their age and/or because of their temporary or permanent mental incapacity.

c. **Statutory rape:** Non-forcible sexual intercourse with a person who is under the statutory age of consent.

d. **Incest:** Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

2. **Domestic Violence:** (as defined by the Violence Against Women Act) A felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim; by a person with whom the victim shares a child in common; by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; 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 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.

**3. Dating Violence:** (as defined by the Violence Against Women Act) Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement with consideration of the length of the relationship, the type of relationship and the frequency of interaction between the persons involved in the relationship.

**4. Stalking:** (as defined by the Violence Against Women Act) Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for the person's safety or the safety of others; or (2) suffer substantial emotional distress. *Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.*

**3. Affirmative Consent:** Affirmative consent means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that the person has the affirmative consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent. Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity (i.e. lack of consciousness, being asleep, being involuntarily restrained, or being intoxicated).

**4. Force:** the use or threat of physical violence to overcome an individual's free will to choose whether or not to participate in sexual activity or provide consent. Force may include words, conduct, or appearance. Force includes causing another's intoxication or impairment through the use of drugs or alcohol. Coercion, intimidation, and non-physical threats can all be forms of force. Consent obtained by force is not valid.

**5. Coercion:** to force one to act or not act based on fear of harm to self or others. Means of coercion may include, but are not limited to, pressure, threats, emotional intimidation, or the use of physical force. Consent obtained through coercion is not valid.

**6. Incapacitation:** a physical condition where a person is unconscious or physically unable to leave or provide consent. This includes a mental condition, permanent or temporary, which makes the victim incapable of understanding the nature of the activity or unable to communicate due to a mental or physical condition.

**7. Complainant(s):** any individual who is alleged to be the victim of sexual harassment.

**8. Respondent(s):** any individual who is reported to be the perpetrator of sexual harassment

**9. Retaliation:** Retaliation is any adverse action taken or threatened (including intimidation, threats, harassment, and other such action) against any Complainant(s) or person reporting or filing a complaint of sexual harassment or any person cooperating in the investigation of allegations of sexual harassment to include testifying, assisting or participating in any manner in an investigation or any person related to or connected with such persons.

## **VI. Reporting Obligation:**

**Mandated Reporters:** Monmouth University considers all university employees responsible for reporting any matters of sexual misconduct, including sexual harassment, to the Title IX Coordinator. Only designated confidential resources are excluded from this reporting obligation.

**Confidential Resources:** All university employees who work in the following offices are exempt from reporting matters of sexual misconduct to the Title IX Coordinator:

- a. Counseling and Psychological Services
- b. Health Services

*Reporting an incident of sexual harassment or prohibited conduct to a mandated reporter, as defined in this section, does not serve as actual knowledge, as defined in Section V. Definitions, for the University.*

## **VII. Supportive Measures:**

Supportive measures are available to all parties regardless of whether they choose to go through any process. These options will be provided to a party once an allegation of a violation of this policy is made to the Title IX office.

Supportive measures that are available, as appropriate, include but are not limited to:

1. Counseling and Prevention Services (confidential on campus resource)
2. Health Services (confidential on campus resource)
3. Monmouth Medical Center (off campus resource)
4. Monmouth University Police Department (on campus resource)
5. Off Campus Police Departments
6. 180 Turning Lives Around (off campus confidential resource)
7. Academic accommodations including, but not limited to, class schedule modifications
8. Work schedule accommodations for university employment
9. Letters of No Contact between the parties
10. Residential accommodations (i.e. changing a student's campus residence)

## **VIII. Emergency Removal:**

Respondent(s) may be removed from a university program or activity on an emergency basis if the university has deemed that there is an immediate threat to the physical health or safety of any student or other individual arising from the allegation of sexual harassment. This determination must be made as part of an individualized safety and risk analysis. The Respondent(s) must be provided with notice of the removal and an opportunity to challenge the decision immediately following the removal. The hearing panel for an emergency removal of a student is comprised of two (2) administrators and one (1) faculty member. An adjudicator will be used for an emergency removal of an employee.

## **IX. Filing a Complaint:**

A formal complaint is a document that initiates the university's grievance process under this policy. In order to file formal complaint, a Complainant(s) must submit a written document to the Title IX Coordinator alleging sexual harassment against a Respondent(s) and request initiation of the grievance procedure. A Complainant(s) must be participating in or attempting to participate in an educational program or [an] activity of the university at the time of filing the formal complaint.

A formal complaint may be filed with the Title IX Coordinator in person, by mail or by email.

The formal complaint must include the Complainant(s)'s physical or digital signature or some other means to indicate that the Complainant(s) is the person(s) filing the complaint. The Title IX Coordinator may also sign a formal complaint of sexual harassment.

Upon receipt of a formal complaint, the Title IX Coordinator will notify the parties of the allegations and the grievance process is initiated including an investigation and adjudication of allegations of sexual harassment.

#### **X. Grievance Process:**

The grievance process detailed below will treat Complainant(s) and Respondent(s) equitably and acknowledges that the Respondent(s) is presumed not responsible for the alleged conduct and that the determination of responsibility will be made at the conclusion of the grievance process. The grievance process will include an investigation, adjudication or hearing and appeal(s). The burden of gathering evidence and burden of proof is on the university, not the parties.

If a Respondent(s) is found responsible for the alleged conduct at the conclusion of the grievance process, disciplinary sanctions or other actions may be imposed. A Complainant(s) may be given remedies designed to restore or preserve equal access to the educational program or activity. These remedies may be the same as supportive measures.

An objective evaluation of all relevant evidence and credibility determinations will be made by trained individuals who have no bias or conflict of interest for or against Complainant(s) or Respondent(s).

Investigations will be conducted by trained individuals who are impartial and free from bias in their investigation duties. The parties and their advisors will be provided with equal access to review the evidence gathered by the investigator as well as the investigation report. The parties and their advisors will have ten (10) business days to inspect, review, and to respond to the evidence. The parties and their advisors will have ten (10) business days to review and to respond to the investigation report before the report can be finalized.

The time frames included in the grievance process are reasonably prompt and allow for extensions or delay for good cause with written notice to both parties.

#### **XI. Hearing Process:**

##### **A. LIVE HEARINGS FOR STUDENT RESPONDENT(S)**

The Office of Student Life will provide simultaneous written notice of the charges, date and time of the hearing and the name of the hearing panel members to the Complainant(s) and the

Respondent(s) prior to the hearing. The hearing panel will be comprised of two members of the administration and one faculty member from the University Disciplinary Committee. Both the Respondent(s) and the Complainant(s) will have an opportunity to object beforehand to the panel members. Such objection will specify the basis thereof, and a determination as to whether to replace the panel member shall be made by the University. The Respondent(s) may NOT waive their right to a hearing. The “preponderance of the evidence” standard will be used to make determinations in hearings. This means determining whether “is it more likely than not” that a violation of the Title IX Sexual Harassment policy occurred.

The Respondent(s) and the Complainant(s) have the right to review any evidence provided to the university during the investigation. Both the Respondent(s) and the Complainant(s) have the right to submit written statements as to their account of the matter. Upon request accommodations may be made to limit face-to-face contact between the Respondent(s) and the Complainant(s) during disciplinary hearings. In addition, both parties to the matter are entitled to have one advisor of choice. Each party is responsible for presenting their own information and therefore, advisors are not permitted to speak or participate directly in any meeting but are only allowed to provide support and/or guidance directly to their respective party. During the hearing the advisor will be required to ask all cross-examination questions of the opposing party and their witnesses. This means that the advisor for the Complainant(s) will ask questions of the Respondent(s) and the Respondent(s)’s witnesses and the advisor for the Respondent(s) will ask questions of the Complainant(s) and the Complainant(s)’s witnesses. The parties should select an advisor who has a schedule which will allow attendance at the scheduled dates and times for meetings and hearings. Delays will not normally be permitted due to the scheduling conflicts of an advisor. The Title IX Coordinator and judicial officer must be notified by the parties at least two (2) business days prior to any scheduled meeting or hearing if they plan to have an advisor present for the meeting or hearing and if so, the identity of the advisor. If a party does not have an advisor for the hearing, one will be provided by the university for the purposes of cross-examination as described above. The Title IX Coordinator, their designee and the judicial officer reserve the right to remove an advisor from any meeting or hearing for violation of this policy.

## **1. REQUEST FOR ACCOMMODATIONS**

All students with disabilities who are involved in the student conduct process including Complainant(s), Respondent(s), supporters, and witnesses may seek accommodations for any stage of the student conduct process, including hearings, conduct meetings, investigations, and any pre-hearing meetings. Any student requesting an accommodation must do so far enough in advance to allow the request to be reviewed and an appropriate accommodation identified and implemented. Accordingly, each

student seeking an accommodation is strongly encouraged to do so as early as possible in the student conduct process. To request an accommodation please refer to the policy on the following page: [monmouth.edu/disability-services/current-students](http://monmouth.edu/disability-services/current-students).

Either party may request that the hearing take place with the parties located in separate rooms or locations using technology to allow the parties to see and hear each other. This request must be made at least five (5) business days prior to the scheduled hearing date.

## **2. STATEMENT OF WITNESSES**

Any persons having specific knowledge of the matter may be called as witnesses. Every effort will be made during the investigation to obtain names and written statements of witnesses and documentary evidence for both the Complainant(s) and the Respondent(s). The hearing panel may preclude any evidence provided by a party or a witness if that individual does not participate in cross-examination.

## **3. CONTROL OF THE HEARING PROCEEDINGS**

The presiding hearing officer shall exercise control over the manner in which the hearing is conducted to avoid unnecessary lengthy hearings and to prevent harassment or intimidation of witnesses. Anyone who disrupts a hearing or who fails to adhere to hearing guidelines may be excluded from the proceedings and is subject to disciplinary action.

## **4. STANDARD OF EVIDENCE**

A preponderance of the evidence standard shall be applied. Therefore it must be established that it is more likely true than not true that the alleged violation took place. It should be noted that the resolution is not dependent upon the number of witnesses who testify on either side, but rather on the credibility and weight which is attributed to such testimony and relevant evidence.

## **5. PRIVACY OF HEARINGS**

The hearing shall be conducted in private. People not directly involved in the hearing are excluded from the proceedings.

## **6. QUESTIONS DURING HEARINGS**

The hearing panel may address questions to any party during the proceedings or to any witness called by the parties or by the hearing panel. Complainant(s) and Respondent(s) may address their questions of their own witnesses through the hearing panel, which shall have the discretion to decide whether the question will be posed to the witness. Complainant(s) and Respondent(s) may not question each other or each other's witnesses directly. Instead, each party must have an advisor at the hearing to conduct cross-examination of the other party and the witnesses of the other party. Cross-examination must be conducted at a live hearing in real-time, directly and orally by the advisor.

The hearing officer must determine whether each question is relevant prior to the party or witness responding. If a question is deemed relevant, the question may be answered. If a question is deemed irrelevant, the hearing officer must provide an explanation for the determination and exclusion of the question. The hearing officer may determine that it is necessary to pause the hearing temporarily in order to make a determination on relevance. Questions which challenge the credibility of a party or a witness may be relevant.

Questions and evidence about a Complainant(s)'s prior sexual behavior are irrelevant unless it is offered: 1) to prove that someone other than the Respondent(s) committed the alleged conduct or 2) to prove consent.

## **7. EVIDENCE FOR CONSIDERATION**

All relevant evidence including pertinent records, exhibits, and written statements may be received for consideration by the hearing panel. Both the Respondent(s) and the Complainant(s) would have received copies of such for review and comment prior to the investigation report being finalized. All evidence gathered during the investigation will be available at the hearing and may be reviewed and utilized by the Respondent(s) and Complainant(s).

The hearing panel may preclude records, exhibits, and the testimony of any witness which were not submitted in conformance with this requirement if, in the opinion of the hearing panel, allowing such records, exhibits, or testimony would substantially impair the Complainant(s)'s or the Respondent(s)'s ability to effectively present their case. In making this determination the hearing panel shall consider such factors as the reasons why the record, exhibit, or statement was not on file, the nature of the testimony summarized in the proposed witness's statement prior to the hearing, and other appropriate factors.

## **8. APPEARANCE OF WITNESSES**

The hearing panel may request the presence of witnesses by sending them a letter via hand-delivery or certified mail, return receipt requested or via email with a read/received receipt.

## **9. FAILURE TO APPEAR AT HEARINGS**

The failure of individuals charged with misconduct to appear at a hearing after proper notice will not prevent the hearing from taking place or invalidate the outcome.

## **10. RECORDING OF HEARINGS**

A recording of the hearing shall be made. The recording will be under the control of the Vice President for Student Life and Leadership Engagement. A copy of the recording will be made available to the parties following a written request of the same.

## **11. DETERMINATION OF THE HEARING**

Within five (5) business days after the hearing deliberations are completed, the hearing panel shall determine (by majority vote) whether the Respondent(s) has violated the Title IX Sexual Harassment Policy. The Chairperson on behalf of the hearing panel, shall prepare a written report to the Vice President of Student Life and Leadership Engagement or their designee consisting of: a statement of each charge, whether the hearing panel has found the Respondent(s) responsible or not responsible, evidence presented to the panel, facts used to reach each decision, credibility assessment of those who testified, any sanctions imposed on the Respondent(s) and any remedies being offered to the Complainant(s).

## **12. NOTIFICATION OF THE HEARING BOARD DECISION**

The Vice President of Student Life and Leadership Engagement or their designee will notify both the Complainant(s) and the Respondent(s) simultaneously in writing of the hearing panel's decision within five (5) business days of the receipt of the decision. The President of the university will also be notified of the decision.

## **13. APPEALS PROCESS**

A decision reached by a hearing panel may be appealed by either party. The appeal must be submitted in writing to the Vice President of Student Life and Leadership Engagement or their designee within five (5) business days of the finding by the hearing panel.

An appeal shall be limited to the review of the verbatim record of the initial hearing and supporting documents unless a further hearing is required to receive and evaluate new evidence. The party filing the appeal has the burden of establishing the basis for the appeal. An appeal may be initiated for one or more of the following purposes:

1. The hearing process as described in the policy was materially violated in such a manner that the outcome could have been affected.
2. The Title IX Coordinator, investigator, or hearing panel member(s) had a conflict of interest or bias that affected the outcome of the matter.
3. Submission of new evidence sufficient enough to alter a decision, or other relevant facts not brought out in the original hearing because such new evidence or facts were not known to the person appealing at the time of the original hearing.

The following Appeal process shall apply:

1. The appeal and any supporting documentation shall be sent to the opposing party for review. The opposing party shall be given five (5) business days to submit a reply.

2. The Vice President of Student Life and Leadership Engagement or their designee shall review the matter and render a decision on the appeal within twenty (20) business days from receipt of the written appeal. The Vice President or their designee shall make a final decision on the case.

Following the Vice President's or their designee's decision the matter shall be concluded with no further recourse under this policy.

All deadlines and time line requirements set forth in this section may be extended for good cause. Both the Respondent(s) and the Complainant(s) will be notified in writing of any delay and provided the date of the new deadline. Some examples of good cause may include considerations such as the absence of a party, a party's advisor or a witness; concurrent law enforcement activity; or the need for language assistance or an accommodation of disabilities.

#### **14. POSSIBLE SANCTIONS**

The following sanctions may be imposed at the conclusion of the grievance process if the Student Respondent(s) is found responsible for having violated this policy:

**Education/Work Assignment**—A requirement to participate in a campus educational program or activity or assignment to perform a number of service work hours within a campus department.

**Fines**—A monetary fine may be imposed as part of a student's sanction. Fines paid to a local community will be taken into consideration. Fines are payable within a prescribed period of time to the Office of Student Life.

**Consultation and/or Assessment**—Student may be assigned a consultation and/or assessment with a psychological counselor/therapist.

**Disciplinary Probation**—May include, but not be limited to, the possible exclusion or restricted participation in privileges or extracurricular university activities for a specified period of time, including the possibility of more severe disciplinary sanctions in the event of further violation of any university regulations during the period of disciplinary probation.

Residence Hall Probation—A defined period of time whereby a student living in residence is given an opportunity to modify their behavior prior to losing the privilege of living on campus. Further violation of the Student Code of Conduct or the terms and conditions of the Residence Hall Contract will result in suspension from residence.

Residence Hall Suspension—Separation of the student from the residence halls for a defined period of time, after which the student is eligible to return. Students under a residence hall suspension are also banned from all university owned and/ or sponsored housing as well as the property and parking lots contiguous to that housing including but not limited to the residential quad.

Residence Hall Expulsion—Permanent expulsion of the student from the residence halls. Students under a residence hall expulsion are also banned from all university owned and/or sponsored housing as well as the property and parking lots contiguous to that housing including but not limited to the residential quad.

Suspension—Separation of the student from the university for a definite period of time. Students suspended will be excluded from all classes and activities at the university. Students under a suspension are restricted from being on any university premises without advance approval from the Office of Student and Community Services or Residential Life. The conditions of readmission shall be stated in the order of the suspension. This action will be on record in the disciplinary files of the Vice President of Student Life and Leadership Engagement (unless specifically agreed to in the order of suspension).

Expulsion—Permanent separation of the student from the university. This action will be permanently on record in the disciplinary files of the Vice President of Student Life and Leadership Engagement. Students under an expulsion are restricted from being on any university premises without advance approval from the Office of Student Life or Residential Life.

Please note: Students suspended or expelled for disciplinary reasons will not be entitled to any refund of tuition or fees paid, this includes but is not limited to room and board.

## **B. LIVE HEARINGS FOR EMPLOYEE RESPONDENT(S)**

The Title IX Coordinator, or designee, will provide simultaneous written notice of the charges, date and time to the Complainant(s) and the Respondent(s) prior to the hearing. The trained adjudicator will be selected by the university. Both the Respondent(s) and the Complainant(s) will have an opportunity to object beforehand to the adjudicator. Such objection will specify the basis thereof, and a determination as to whether to replace the adjudicator shall be made by the

University. The Respondent(s) may NOT waive their right to a hearing. The “preponderance of the evidence” standard will be used to make determinations in hearings. This means determining whether “is it more likely than not” that a violation of the Title IX Sexual Harassment policy occurred.

The Respondent(s) and the Complainant(s) have the right to review any evidence provided to the university during the investigation. Both the Respondent(s) and the Complainant(s) have the right to submit written statements as to their account of the matter. Upon request, accommodations may be made to limit face-to-face contact between the Respondent(s) and the Complainant(s) during disciplinary hearings. In addition, both parties to the matter are entitled to have one advisor of choice. Each party is responsible for presenting their own information and therefore, advisors are not permitted to speak or participate directly in any meeting but are only allowed to provide support and/or guidance directly to their respective party. During the hearing the advisor will be required to ask all cross-examination questions of the opposing party and their witnesses. This means that the advisor for the Complainant(s) will ask questions of the Respondent(s) and the Respondent(s)’s witnesses and the advisor for the Respondent(s) will ask questions of the Complainant(s) and the Complainant(s)’s witnesses. The parties should select an advisor who has a schedule which will allow attendance at the scheduled dates and times for meetings and hearings. Delays will not normally be permitted due to the scheduling conflicts of an advisor. The Title IX Coordinator and adjudicator must be notified by the parties at least two (2) business days prior to any scheduled meeting or hearing if they plan to have an advisor present for the meeting or hearing and if so, the identity of the advisor. If a party does not have an advisor for the hearing, one will be provided by the university for the purposes of cross-examination as described above. The Title IX Coordinator, their designee and the adjudicator reserve the right to remove an advisor from any meeting or hearing for violation of this policy.

## **1. REQUEST FOR ACCOMMODATIONS**

All employees with disabilities who are involved in the employee conduct process including Complainant(s), Respondent(s), supporters, and witnesses may seek accommodations for any stage of the process, including hearings, conduct meetings, investigations, and any pre-hearing meetings. Any employee requesting an accommodation must do so far enough in advance to allow the request to be reviewed and an appropriate accommodation identified and implemented. Accordingly, each employee seeking an accommodation is strongly encouraged to do so as early as possible in the process. To request an accommodation please refer to [Human Resources](https://www.monmouth.edu/hr/documents/ada-policy-july-2012.pdf) at the following link: <https://www.monmouth.edu/hr/documents/ada-policy-july-2012.pdf>.

Either party may request that the hearing take place with the parties located in separate rooms or locations using technology to allow the parties to see and hear each other. This request must be

made at least five (5) business days prior to the scheduled hearing date to the Title IX Coordinator.

## **2. STATEMENT OF WITNESSES**

Any persons having specific knowledge of the matter may be called as witnesses. Every effort will be made during the investigation to obtain names and written statements of witnesses and documentary evidence for both the Complainant(s) and the Respondent(s). The hearing panel may preclude any evidence provided by a party or a witness if that individual does not participate in cross-examination.

## **3. CONTROL OF THE HEARING PROCEEDINGS**

The adjudicator shall exercise control over the manner in which the hearing is conducted to avoid unnecessary lengthy hearings and to prevent harassment or intimidation of witnesses. Anyone who disrupts a hearing or who fails to adhere to hearing guidelines, may be excluded from the proceedings and is subject to disciplinary action.

## **4. STANDARD OF EVIDENCE**

A preponderance of the evidence standard shall be applied. Therefore it must be established that it is more likely true than not true that the alleged violation took place. It should be noted that the resolution is not dependent upon the number of witnesses who testify on either side, but rather on the credibility and weight which is attributed to such testimony and relevant evidence.

## **5. PRIVACY OF HEARINGS**

The hearing shall be conducted in private. People not directly involved in the hearing are excluded from the proceedings.

## **6. QUESTIONS DURING HEARINGS**

The hearing adjudicator may address questions to any party during the proceedings or to any witness called by the parties or by the hearing panel. Complainant(s) and Respondent(s) may address their questions of their own witnesses through the hearing adjudicator, who shall have the discretion to decide whether the question will be posed to the witness. Complainant(s) and Respondent(s) may not question each other or each other's witnesses directly. Instead, each party must have an advisor at the hearing to conduct cross-examination of the other party and the witnesses of the other party. Cross-examination must be conducted at a live hearing in real-time, directly and orally by the advisor.

The hearing adjudicator must determine whether each question is relevant prior to the party or witness responding. If a question is deemed relevant, the question may be answered. If a question is deemed irrelevant, the adjudicator must provide an explanation for the determination

and exclusion of the question. The adjudicator may determine that it is necessary to pause the hearing temporarily in order to make a determination on relevance. Questions which challenge the credibility of a party or a witness may be relevant.

Questions and evidence about a Complainant(s)'s prior sexual behavior are irrelevant unless it is offered: 1) to prove that someone other than the Respondent(s) committed the alleged conduct or 2) to prove consent.

## **7. EVIDENCE FOR CONSIDERATION**

All relevant evidence including pertinent records, exhibits, and written statements may be received for consideration by the hearing panel. Both the Respondent(s) and the Complainant(s) would have received copies of such for review and comment prior to the investigation report being finalized. All evidence gathered during the investigation will be available at the hearing and may be reviewed and utilized by the Respondent(s) and Complainant(s).

The hearing adjudicator may preclude records, exhibits, and the testimony of any witness which were not submitted in conformance with this requirement if, in the opinion of the adjudicator, allowing such records, exhibits, or testimony would substantially impair the Complainant(s)'s or the Respondent(s)'s ability to effectively present their case. In making this determination, the adjudicator shall consider such factors as the reasons why the record, exhibit, or statement was not on file, the nature of the testimony summarized in the proposed witness's statement prior to the hearing, and other appropriate factors.

## **8. APPEARANCE OF WITNESSES**

The hearing adjudicator may request the presence of witnesses by sending them a letter via hand-delivery or certified mail, return receipt requested or via email with a read/received receipt.

## **9. FAILURE TO APPEAR AT HEARINGS**

The failure of individuals charged with misconduct to appear at a hearing after proper notice will not prevent the hearing from taking place or invalidate the outcome.

## **10. RECORDING OF HEARINGS**

A recording of the hearing shall be made. The recording will be under the control of the Title IX Coordinator. A copy of the recording will be made available to the parties following a written request of the same.

## **11. DETERMINATION OF THE HEARING**

Within five (5) business days after the hearing deliberations are completed, the hearing adjudicator shall determine whether the Respondent(s) has violated the Title IX Sexual Harassment Policy. The adjudicator shall prepare a written report to the Area Vice President of

the Respondent(s) consisting of: a statement of each charge and whether the hearing adjudicator has found the Respondent(s) responsible or not responsible, evidence presented to the adjudicator, facts used to reach each decision, credibility assessment of those who testified, any sanctions imposed on the Respondent(s) and any remedies being offered to the Complainant(s).

## **12. NOTIFICATION OF THE HEARING ADJUDICATOR DECISION**

The Area Vice President or their designee will notify both the Complainant(s) and the Respondent(s) simultaneously in writing of the hearing adjudicator's decision within five (5) business days of the receipt of the decision. The President of the university will also be notified of the decision.

## **13. APPEALS PROCESS**

A decision reached by an adjudicator may be appealed by either party. The appeal must be submitted in writing to the Respondent(s)'s Area Vice President or their designee within five (5) business days of the finding by the hearing adjudicator.

An appeal shall be limited to the review of the verbatim record of the initial hearing and supporting documents unless a further hearing is required to receive and evaluate new evidence. The party filing the appeal has the burden of establishing the basis for the appeal. An appeal may be initiated for one or more of the following purposes:

1. The hearing process as described in the policy was materially violated in such a manner that the outcome could have been affected.
2. The Title IX Coordinator, investigator, or hearing panel member(s) had a conflict of interest or bias that affected the outcome of the matter.
3. Submission of new evidence sufficient enough to alter a decision, or other relevant facts not brought out in the original hearing because such new evidence or facts were not known to the person appealing at the time of the original hearing.

The following Appeal process shall apply:

1. The appeal and any supporting documentation shall be sent to the opposing party for review. The opposing party shall be given five (5) business days to submit a reply.

2. The Respondent(s)'s Area Vice President or their designee shall review the matter and render a decision on the appeal within twenty (20) business days from receipt of the written appeal.

3. Within five (5) business days of the receipt of the decision by the Respondent(s)'s Area Vice President or their designee, an appeal can be made by either party to the President. The appeal and any supporting documentation shall be sent to the opposing party for review. The opposing party shall be given five (5) business days to submit a reply.

4. The President or their designee shall make a final decision on the case within twenty (20) business days from the receipt of the appeal. The President or their designee shall make a final decision on the case.

Following the President's or their designee's decision the matter shall be concluded with no further recourse under this policy.

All deadlines and time line requirements set forth in this section may be extended for good cause. Both the Respondent(s) and the Complainant(s) will be notified in writing of any delay and provided the date of the new deadline. Some examples of good cause may include considerations such as the absence of a party, a party's advisor or a witness; concurrent law enforcement activity; or the need for language assistance or an accommodation of disabilities.

#### **14. POSSIBLE SANCTIONS**

Record to personnel file

Educational programs and/ or professional development programs

Disciplinary probation

Reassignment of work duties and/or location

Suspension from employment

Termination of employment

## **XII. Dismissal of Formal Complaint:**

A formal complaint must be dismissed from consideration under this policy if the conduct does not meet the definition of sexual harassment described herein (Section V. Definitions, 2. Sexual Harassment) or if the conduct did not occur in the education program or activity against a person in the U.S. This dismissal only pertains to the Title IX Sexual Harassment Policy, not to other university policies that may be implicated.

A formal complaint may, at the university's discretion, be dismissed from consideration under this policy if: 1) the Complainant(s) informs the Title IX Coordinator in writing that they wish to withdraw the formal complaint or allegations therein, 2) if the Respondent(s) is no longer enrolled or employed by the university, or 3) if specific circumstances prevent the university from gathering sufficient evidence to reach a determination.

The University must give the parties simultaneous written notice of a dismissal, mandatory or discretionary, and the reasons for the dismissal.

## **XIII. Consolidation:**

The university may, in its discretion, consolidate formal complaints that arise out of the same facts.

## **XIV. Informal Resolution:**

The university typically will not use mediation or any other informal procedure to resolve cases involving allegations of sexual assault or other nonconsensual sexual contact.

In certain instances of sexual harassment, the parties may voluntarily agree to follow an informal resolution procedure instead of the formal resolution procedure. In order to proceed with an informal resolution option, a formal complaint must be filed with the Title IX Coordinator. Following the filing of the formal complaint, both parties must give voluntary, informed, written consent to request informal resolution to the Title IX Coordinator. The Title IX Coordinator or designee will determine, in their discretion, whether a matter is appropriate for an informal resolution process and whether any proposed resolution as a result of an informal resolution process is appropriate. If a matter is deemed to be appropriate for an informal resolution process, the Title IX Coordinator or their designee may arrange for mediation between the parties or coordinate other voluntary informal resolution.

Informal resolution procedures are optional and may be terminated at any time, prior to agreeing to a resolution, by any of the parties involved or the university and the matter may be referred to

the formal hearing procedure. Any agreements that are made during the informal resolution procedure must be documented, signed by the involved parties and the Title IX Coordinator or their designee. In the event that no agreement is reached, the matter may be referred to the formal hearing procedure for further action. All parties may have an advisor of choice at all meetings during the informal resolution process. Advisors are not permitted to speak or participate directly in any meeting but are only allowed to provide support and/or guidance directly to their respective party.

Informal resolution may not be utilized when the allegation is that of an employee sexually harassing a student.

#### **XV. Retaliation:**

The university will take appropriate steps to assure that a person who in good faith reports, complains about, or participates in an informal resolution or formal investigation of a sexual harassment and/or discrimination allegation will not be subjected to retaliation. The university also will take appropriate steps to assure that a person against whom such an allegation is made is treated fairly. The Director of the Office of Equity and Diversity will take appropriate follow-up measures to assure the goals of this policy are met. Persons who believe they are experiencing retaliation are strongly encouraged to lodge a complaint with the university using the same procedure for lodging a discrimination/sexual harassment complaint.

#### **XVI. Record Keeping:**

Records must be maintained for a minimum of seven (7) years. Matters involving Student Respondent(s) will be kept in Student Life and matters involving Employee Respondent(s) will be kept in the Title IX office. This requirement applies to all records created to investigate an allegation of sexual harassment as defined in Section V. Definitions, 2. Sexual Harassment, of this policy.

#### **XVII. Training:**

All investigators, hearing panel members, adjudicators and Title IX coordinators will receive annual training. Trainings will be posted on the Monmouth University website.