



because a student's speech or expression is deemed offensive by others does not mean it constitutes discrimination or harassment.

In applying these definitions, College administrators shall view the speech or expression in its context and totality and shall apply the following standard: the alleged victim subjectively views the conduct as discrimination or harassment and that the conduct is objectively severe or pervasive enough that a reasonable person would agree that the conduct is discriminatory or harassing.

- A. **Discrimination:** any act or failure to act that unreasonably differentiates treatment of others based solely on their Protected Status and is sufficiently serious, based on the perspective of a reasonable person, to unreasonably interfere with or limit the ability of that individual to participate in, access or benefit from the College's programs and activities. Discrimination may be intentional or unintentional.
- B. **Harassment:** a type of Discrimination that happens when verbal, physical, electronic or other behavior based on a person's Protected Status interferes with a person's participation in the College's programs and activities and it either creates an environment that a reasonable person would find hostile, intimidating, abusive or where submitting to or rejecting the conduct is used as the basis for decisions that affect the person's participation in the College's programs and activities.

Harassment may include but is not limited to: threatening or intimidating conduct directed at another because of the individual's Protected Status; ethnic slurs, negative stereotypes and hostile acts based on an individual's Protected Status.

- C. **Protected Status:** race, color, national origin, religion, sex, sexual orientation, gender identity or expression, pregnancy, disability, genetic information, age, political affiliation or veterans' status.
- D. **Standard of Evidence** - the College uses the preponderance of the evidence as the standard for proof of whether a violation occurred. In the student due process hearing and employee grievance process, legal terms like "guilt," "innocence" and "burden of proof" are not applicable. Student and employee due process hearings are conducted to take into account the totality of all evidence available from all relevant sources. The College will find the alleged Perpetrator either "responsible" or "not responsible" for violating these Procedures.

## II. STATEMENTS OF PROHIBITION

### A. Prohibition of Retaliation.

The College strictly prohibits punishing students or employees for asserting their rights to be free from Unlawful Discrimination. Retaliation against any person participating in connection with a complaint of Unlawful Discrimination is strictly prohibited. Reports of retaliation will be addressed through this procedure and/or other applicable College procedures. Retaliation includes, but is not limited to, any

form of intimidation, punitive actions from authority figures or peers, reprisals (acts of vengeance) or harassment. Retaliation is a serious violation and should be reported immediately. The College will take appropriate disciplinary action against any employee or student found to have retaliated against another.

**B. Prohibition of Providing False Information.**

Any individual who knowingly files a false report or complaint, who knowingly provides false information to College officials, or who intentionally misleads College officials involved in the investigation or resolution of a complaint may be subject to disciplinary action including, but not limited to expulsion or employment termination. The College recognizes that an allegation made in good faith will not be considered false when the evidence does not confirm the allegation(s) of Unlawful Discrimination.

**III. REPORTING OPTIONS**

**A. Student Complaints.**

Any student wishing to make a report relating to Unlawful Discrimination may do so by reporting the concern to the Dean of Students by completing a MCC Incident Form at [mayland.edu](http://mayland.edu):

Michelle Musich  
Dean of Students/Title IX Coordinator  
Gwaltney Hall  
828-766-1262  
[mmusich@mayland.edu](mailto:mmusich@mayland.edu)

For Unlawful Discrimination incidents between students and employees, the Dean of Students will work in partnership with the Director of Human Resources to investigate and resolve the allegations.

**B. Employee Complaints.**

Any employee wishing to make a report related to Unlawful Discrimination may do so by reporting the concern to:

Judy McClure  
Director of Human Services/Deputy Title IX Coordinator  
Gwaltney Hall  
828-766-1272  
[jmclure@mayland.edu](mailto:jmclure@mayland.edu)

**C. Confidential Reporting.**

The College will make reasonable efforts to preserve the Complainant's and Respondent's privacy. Although all reports will be treated with sensitivity, when a report is made, the College may be required to act on it.

There are designated campus professionals (confidential employees) who will keep information confidential by virtue of their professional role and will not reveal any information shared without expressed written consent of the individual, unless required by law.

MCC Confidential Employees are:

Doug Dewar  
Counseling & Disability Services  
Gwaltney Hall  
828-766-1256  
[ddewar@mayland.edu](mailto:ddewar@mayland.edu)

Maria Braswell  
SOAR  
Gwaltney Hall  
828-766-1261  
[mbraswell@mayland.edu](mailto:mbraswell@mayland.edu)

#### **IV. INITIAL INVESTIGATION**

As these Procedures apply to both students and employees as either the Complainant or the Respondent, the administrator receiving the incident report will determine if the case should be handled by: 1) the Dean of Students or designee (student/student); 2) the Director of Human Resources, or designee (employee/employee); or 3) both (student/employee). For incidents involving students and employees, the College will utilize the process for both the student investigation and the employee investigation sections as applicable.

##### **A. Student Investigation.**

1. Students filing complaints (“Complainants”) are urged to do so by meeting with the Dean of Students and/or completing a MCC Incident Form at [mayland.edu](http://mayland.edu) as soon as possible after disclosure or discovery of the facts giving rise to the complaint. All complaints submitted will be investigated; however, Complainants should recognize that delays in reporting may significantly impair the ability of College officials to investigate and respond to such complaints.
2. During the investigation process, the Dean of Students may implement temporary measures in order to facilitate an efficient and thorough investigation process as well as to protect the rights of all parties involved. The temporary actions include, but are not limited to: reassignment of class schedules; temporary suspension from campus (but be allowed to complete coursework); or directives that include no contact between the involved parties. Complainants will be notified of available counseling services and

their options of changing academic situations and other interim protective measures.

3. The Dean of Students shall fully investigate any complaints and will, as needed, and if the complaint also involves an employee, collaborate with the College's Director of Human Resources. During the course of the investigation, the Dean of Students may consult with other relevant College administrators and the College Attorney.
4. During the investigation, and if applicable to the complaint, the Dean of Students shall meet with the Complainant and the alleged Perpetrator ("Respondent") separately and give each party an equal opportunity to provide evidence, including informing the Dean of Students of any potential witnesses. Both parties will be given access to any information provided by the other in accordance with any federal or state confidentiality laws.
5. The Complainant and the Respondent are allowed to be accompanied by an advisor. The advisor may not present on behalf of either party. If the Complainant or the Respondent chooses to have an advisor who is an attorney, notification must be provided to the Title IX Coordinator at least three (3) College business days prior to the hearing date. In this case, the College Attorney may also be present.
6. A private file regarding the complaint shall be maintained by the Dean of Students. To the extent possible, the College will keep all information relating to the complaint and investigations private; however, to maintain compliance with the Clery Act, both parties will be informed of the outcome of any institutional proceedings under these Procedures.
7. The Dean of Students shall make every effort to conclude the investigation as soon as possible but no later than sixty (60) calendar days absent extenuating circumstances.

**B. Employee Investigations.**

1. Employees filing complaints ("Complainants") are urged to do so in writing as soon as possible but no later than thirty (30) days after disclosure or discovery of the facts giving rise to the complaint. Complaints submitted after the thirty (30) day period will still be investigated; however, Complainants should recognize that delays in reporting may significantly impair the ability of College officials to investigate and respond to such complaints. The Director of Human Resources shall fully investigate any complaints. During the course of the investigation, the Director of Human Resources may consult with other relevant College administrators and the College Attorney.

2. During the investigation, and if applicable to the complaint, the Director of Human Resources shall meet with the Complainant and the alleged Perpetrator (“Respondent”) separately and give each party an equal opportunity to provide evidence, including informing the Director of Human Resources of any potential witnesses. Both parties will be given access to any information provided by the other in accordance with any federal or state confidentiality laws.
3. During the investigation process, the Director of Human Resources may implement temporary measures in order to facilitate an efficient and thorough investigation process as well as to protect the rights of all parties involved. The Director of Human Resources may suspend an employee with pay pending an investigation if such action is in the College’s best interest.
4. A confidential file regarding the complaint shall be maintained by the Director of Human Resources. To the extent possible, the College will keep all information relating to the complaint and investigations confidential; however, to maintain compliance with the Clery Act, both parties will be informed of the outcome of any institutional proceedings under these Procedures.
5. The Director of Human Resources shall make every effort to conclude the investigation as soon as possible but no later than sixty (60) calendar days absent extenuating circumstances.
6. Complainants will be notified of available counseling services and other interim protective measures.

## **V. DETERMINATION AND APPEAL**

### **A. Students.**

1. After the investigation is complete, the Dean of Students will put forward a determination of finding, based on the Standard of Evidence, and sanction(s) to both the Complainant and Respondent. The Dean of Students will submit to each party a final outcome letter that will include, but is not limited to, the following:
  - a. Determination if the Respondent is responsible or not responsible for violating these Procedures;
  - b. Sanction(s);
  - c. Whether monitoring of academic schedules is needed between the parties to ensure that the individuals involved are not in classes together (the Dean of Students will assist in this process).
  - d. Short-term College counseling services available to each party.

2. The Complainant or the Respondent may appeal to the College President. The process is outlined below:
  - a. The Complainant and the Respondent have the right to review all evidence, including written statements by the Respondent, the Complainant, or witnesses. Strict rules of evidence do not apply. The Standard of Evidence shall apply.
  - b. The President will review the Dean of Students' determination. The President may choose to meet with the Complainant, Respondent, witnesses, and/or Dean of Students if needed for further information. The President may consult with other relevant College administrators and the College Attorney.
  - c. The Complainant and the Respondent are allowed to be accompanied by an advisor. The advisor may not present on behalf of either party unless otherwise instructed to do so. If the Complainant or the Respondent chooses to have an advisor who is an attorney, notification must be provided to the College President at least three (3) business days prior to the meeting date. In this case, the College Attorney will also be present.
  - d. The College President will submit to each party a final decision letter within ten (10) business days of receiving the appeal or from the last interview, absent extenuating circumstances.

In the case of short term workforce training classes, the student may accrue too many absences during this process to continue the course. The student will be allowed to enroll at no cost in the next available section if found innocent of alleged misconduct.

**B. Employees.**

1. After the investigation is complete, the Director of Human Resources will put forward a determination of finding, based on the Standard of Evidence, and sanctions to both the Complainant and Respondent. A final outcome letter will be submitted to the Complainant and Respondent that may include, but not limited to, the following:
  - a. Determination if the Respondent is responsible, not responsible, or if the decision is deemed inconclusive, or shared responsibility.
  - b. Sanction(s), if appropriate.
  - c. Monitoring of academic schedules or workplace schedule if needed.
  - d. Short-term counseling services will be offered to each party.
2. The Complainant or Respondent may appeal to the College President. The process is outlined below:

- a. The Complainant and the Respondent have the right to review all evidence, including written statements by the Respondent, the Complainant, or witnesses. Strict rules of evidence do not apply. The Standard of Evidence shall apply.
- b. The President will review the Director of Human Resources' determination. The President may choose to meet with the Complainant, Respondent, witnesses, and/or Director of Human Resources if needed for further information. The President may consult with the other relevant College administrators and the College Attorney.
- c. The Complainant and the Respondent are allowed to be accompanied by an advisor. The advisors may not present on behalf of either party unless otherwise instructed to do so. If the Complainant or the Respondent chooses to have an advisor who is an attorney, notification must be provided to the College President at least three (3) business days prior to the meeting date. In this case, the College Attorney may also be present.
- d. The College President will submit to each party a final decision letter within ten (10) business days of receiving the appeal or from the last review, absent extenuating circumstances.

**C. Sanctioning.**

The following sanctions are examples of what may be imposed for those who have violated these Procedures.

1. Students.
  - a. Verbal or Written Warning
  - b. Probation
  - c. Administrative withdrawal from a course without refund
  - d. Required Counseling
  - e. No Contact Directive
  - f. Suspension
  - g. Expulsion
  - h. Other consequences deemed appropriate
2. Employees.
  - a. Verbal or Written Warning
  - b. Performance Improvement Plan
  - c. Required Counseling
  - d. Required Training or Education
  - e. Demotion (President must impose)
  - f. Suspension with or without Pay (President must impose)
  - g. Termination (President must impose)

- h. Other consequences deemed appropriate to the specific violation

Adopted: 7/01/2018

Updated 7/25/2019