

TITLE IX SEXUAL HARASSMENT GRIEVANCE PROCESS

DMI desires to provide a safe school environment that allows all students equal access and opportunities in DMI's academic, extracurricular, and other educational support programs, services, and activities. DMI does not discriminate on the basis of sex in the education program or activity that it operates. DMI is required by Title IX of the Education Amendments of 1972 (Title IX) and Part 106 of Title 34 of the United States Code of Federal Regulations not to discriminate on the basis of sex in the education program or activity that it operates, including admission and employment. DMI recognizes that sexual harassment is a form of discrimination on the basis of sex and DMI prohibits sexual harassment as defined by Title IX and Part 106 of Title 34 of the United States Code of Federal Regulations.

The following Grievance Procedure is to be utilized to investigate and provide a fair process with equitable treatment.

SECTION 1: DEFINITIONS

As used in this grievance procedure:

Actual knowledge means notice of sexual harassment or allegations of sexual harassment to the any employee of DMI. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of DMI with actual knowledge is the **Respondent**.

Complainant means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Decision-Maker means the individual or group of individuals who issue a written determination regarding responsibility of the **Respondent**. The Decision-Maker cannot be the Title IX Coordinator or the investigator.

Emergency Removal means DMI may remove a **Respondent** from DMI's program or activity on an emergency basis, provided that DMI undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the **Respondent** with notice and an opportunity to challenge the decision immediately following the removal. DMI may implement an emergency removal before an investigation into sexual harassment allegations concludes or where no grievance process is pending. Emergency removal is not a substitute for reaching a determination as to a **Respondent's** responsibility for the sexual harassment allegations. If any employee is the **Respondent**, the employee may be placed on administrative leave with pay during the pendency of the investigation.

Equitable Treatment

Equitable Treatment hinges on a fair process and resulting outcome. The procedure should specify remedies to **Complainant** and disciplinary sanctions against **Respondent** only if there is a determination of responsibility after a fair process. Remedies are to restore or preserve equal access to the educational program and/or activity. Remedies may include Supportive Measures, but may also be disciplinary, punitive, and burdensome toward the **Respondent**.

Formal complaint means a document filed by a **Complainant** or signed by the Title IX Coordinator alleging sexual harassment against a **Respondent** and requesting that DMI investigate the allegation of sexual harassment.

Notice means whenever any employee: witnesses sexual harassment; hears about sexual harassment or sexual harassment allegations from a **Complainant** (i.e., a person alleged to be the victim) or a third party (e.g., the **Complainant's** parent, friend, or peer); receives a written or verbal complaint about sexual harassment or sexual harassment allegations; or by any other means.

Program or Activity –No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity. A program or activity includes all of the operations DMI. It also includes locations, events, or circumstances over which DMI exercised substantial control over both the **Respondent** and the context in which the harassment occurs.

Remedies – This procedure is to provide remedies to **Complainant** and disciplinary sanctions against **Respondent** only if there is a determination of responsibility after a fair process.

Report means the act of providing a DMI employee “Notice” (as defined above) of alleged sexual harassment, whether through oral or written means.

Relevant Evidence – Evidence is relevant if:

- (a) It has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) The fact is of consequence in determining the action.

Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- (a) An employee of DMI conditioning the provision of an aid, benefit, or service of DMI on an individual's participation in unwelcome sexual conduct;

- (b) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to DMI's education program or activity; or
- (c) *Sexual assault* as defined in 20 USC 1092, *dating violence* as defined in 34 USC 12291, *domestic violence* as defined in 34 USC 12291, or "stalking" as defined in 34 USC 12291.

Standard of Evidence – Preponderance of Evidence means concluding that a fact is more likely than not to be true.

Supportive Measures means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the **Complainant** or the **Respondent** before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to DMI's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or DMI's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

SECTION 2: PROCEDURE

- I. **Report of Sexual Harassment.**
Any person may Report Sexual Harassment to the Title IX Coordinator in person, by mail, email or telephone. The report of sexual harassment need not be made during business hours. The Report of Sexual Harassment **is not** the formal complaint.
- II. Upon receipt of the Report of Sexual Harassment, the Title IX Coordinator must meet with **Complainant** as soon as possible and:
 - (a) Determine the facts from the **Complainant**;
 - (b) Discuss the availability of **Supportive Measures** and provide the Supportive Measures as appropriate;
 - (c) Inform the **Complainant** of the right to file a **Formal Complaint**; and
 - (d) Inform the **Complainant** of the procedure to file a **Formal Complaint**.
- III. If the **Complainant** refuses to file a formal complaint, The Title IX Coordinator has two (2) options:
 - (a) **Option A** - Close the matter without action and provide **Supportive Measures** as appropriate; document measures taken to preserve and restore equal access to the educational process to the **Complainant**; document the reasons the response was not clearly unreasonable; and maintain a confidential report of the matter and all actions taken for seven (7) years.

- (b) **Option B** – The Title IX Coordinator to sign and open an investigation. This generally occurs if the report that was received was sufficient to impart actual knowledge of sexual harassment or assault upon the student; and/or the report implies a pattern of sexual harassment by an employee in the position of authority.

IV. **Formal Complaint.**

Once there is a formal complaint of sexual harassment, the Title IX Coordinator must initiate an investigation immediately. The Formal Complaint may be filed by the Title IX Coordinator if the **Complainant** does not file the formal complaint (See III(b) above).

V. **Notice.** The Title IX Coordinator must review the complaint and provide notices to the parties. The Notices must advise:

- (a) Details of the allegations;
- (b) That the **Respondent** is presumed not responsible;
- (c) That the parties have a right to an advisor/attorney of their choosing;
- (d) The right to inspect and review evidence;
- (e) That there is a prohibition against false statements or submission of false information;
- (f) The prohibition against retaliation;
- (g) Of equitable treatment of the parties;
- (h) That the Title IX Coordinator has a right to consolidate this action with others if appropriate;
- (i) There may be the potential of an emergency removal or administrative leave during the pendency of the investigation if necessary and appropriate; and
- (j) that, if during the investigation additional allegations are developed, then the notice would go to the parties detailing the new allegation(s).

VI. **Dismissal of Complaint Before or During Investigation by the Title IX Coordinator.**

The Title IX Coordinator has authority to dismiss the complaint as follows:

- (a) **Mandatory Dismissal.** The Title IX Coordinator must dismiss if the conduct even if true would not constitute “sexual harassment” under the guidance; or the conduct did not occur in DMI's educational program or activity; or the conduct did not occur against a person in the United States.
- (b) **Discretionary Dismissal.** The complaint may be dismissed before or during the investigation if the **Complainant** wishes to withdraw the complaint; if the **Respondent** no longer enrolled or employed or specific circumstances prevent the ability to gather evidence sufficient to reach a determination.
- (c) **Notice of Dismissal.** If the matter is dismissed, there must be simultaneous notice to the parties with specific reasons submitted by the Title IX Coordinator.

VII. **Investigation Procedures (Investigator).**

- (a) The Investigator shall be assigned by the Title IX Coordinator
- (b) The Investigator is charged with the gathering of evidence;
- (c) There will be no access to medical treatment records without the consent of the parties;
- (d) There will be equal opportunity to both parties to present witnesses, evidence, and submit written questions to witnesses and other parties;
- (e) There will be no restriction to any party to disclose/discuss the allegations with 3rd parties. There is a restrict disclosure of evidence and investigative summaries with 3rd parties with the exception of the advisor/attorney;
- (f) Investigator must restrict redisclosure of information protected by FERPA;
- (g) Investigator is prohibited from asking questions/evidence about **Complainant's** sexual predisposition or prior sexual behavior, unless offered to "(1) prove someone other than **Respondent** committed alleged conduct or (2) prior behavior with **Respondent** offered to prove consent".

VIII. **Advisor/attorney.**

- (a) Both parties have the opportunity to have an advisor/attorney present during proceedings and their client's interviews;
- (b) No limits on the choice of advisor/attorney;
- (c) Investigator may establish restrictions as to advisor's/attorney's participation in proceedings, meeting, and interviews;
- (d) The Investigator will send notice of date, time, location, participation, and purpose of all proceedings, meetings, or interviews of each party with sufficient time to prepare;
- (e) The Investigator must provide a copy of all evidence obtained to each party for further review and allow each party ten (10) days to respond;
- (f) After response, the Investigator must assess the credibility of the witness(es) statement(s) and create a report fairly summarizing all relevant evidence and provide to both parties and parties' advisor/attorney for review at least ten (10) days before the report goes to the Decision-Maker;
- (g) The parties then will have seven (7) days to submit written responses and list of relevant questions to be answered by the other party or witness and forward the information to the Decision-Maker.

IX. **Making a Determination of Responsibility (Decision-Maker).** The Title IX

Coordinator will designate the person who will be the Decision-Maker. The Decision-Maker will:

- (a) Advise the parties of any irrelevant questions that may have been submitted;
- (b) Obtain answers to questions posed by the parties and provide answers to questions to both parties;
- (c) Allow additional time for follow-up questions;
- (d) Apply the preponderance of evidence standard to evaluate from the perspective of a reasonable person standing in the shoes of the **Complainant**;
- (e) Make a written determination which includes the identification of allegations, the description of the procedural steps, the finding of facts and supporting determination, conclusion regarding application of code of conduct to the facts, a statement of rationale for the reason as to each allegation with determination of responsibility,

include a list of disciplinary sanctions and remedies as appropriate and provide the parties with notice of and the process for appeal.

X. **Appeal Process.**

Both parties have a right to appeal on the following basis:

- (a) Procedural irregularity
- (b) New evidence previously unavailable
- (c) Conflict of interest or bias of the Decision-Maker

The Appeal must be presented in writing to the Coordinator within ten (10) days of the Ruling of the Decision-Maker. If no appeal is taken, the decision will be final. Once an appeal is filed then the other party will be notified of the appeal being filed. The other party will have ten (10) days to either answer or file an Appeal on his/her behalf. Each party will be able to have an opportunity to appeal equally. DMI shall use a disciplinary hearing officer that is not the Title IX Coordinator, Investigator or Decision-Maker to review the appeal. The appeal will comply with the standard of evidence. Both parties will have an opportunity to submit written statements and the decision maker will issue a final decision simultaneously to both parties.

XI. **Informal Resolution.**

An informal resolution may be used when there is a complaint of sexual harassment between students. This process is not allowed if it is an allegation that an employee sexually harassed a student. There must be notice of process including rights and consequences and must be accomplished prior to the final determination. The parties must recognize this is a voluntary process and must provide written consent to participate in an informal resolution. The Title IX Coordinator may act as the informal Resolution facilitator.

XII. **Record Keeping.**

The Title IX Coordinator is responsible for maintaining each sexual harassment investigation file including all evidence, any appeals and results of appeals, information resolution documents and information regarding supportive measures taken in response to a report or formal complaint for seven (7) years.

XIII. **Training Material – Record Keeping.**

- (a) All materials used to train the Title IX Coordinators, Investigators, Decision-Makers, and any person who facilitates an informal resolution process (if different from Title IX Coordinator).
- (b) The training materials must be publicly available on its website; or, if DMI does not maintain a website, DMI must make these materials available upon request for inspection by members of the public.