

# MAINE COMMUNITY COLLEGE SYSTEM

## GENERAL ADMINISTRATION

### Section 202

**SUBJECT: SEXUAL HARASSMENT, SEXUAL ASSAULT AND CONSENSUAL RELATIONS**

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**PURPOSE: To prevent sexual harassment, sexual assault and prohibit certain consensual sexual relationships**

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#### **A. Sexual Harassment and Sexual Assault**

Sexual harassment and/or assault of employees or students is a violation of state and federal law and a violation of this policy. Any employee or student who violates this policy or those laws will be subject to disciplinary action.

Sexual advances, requests for sexual favors, and other verbal or physical conduct or assaults of a sexual nature constitute sexual harassment when:

1. Submission to such conduct is made either explicitly or implicitly as a term or condition of an individual's employment or educational benefits;
2. Submission to or rejection of such conduct by an individual is used as the basis for academic or employment decisions affecting that individual; or
3. Such conduct has the purpose or effect of substantially interfering with an individual's academic or work performance or creating an intimidating, hostile or offensive employment, educational or living environment; and
4. A person of reasonable sensibilities would clearly have understood that the behavior or conduct was unwelcome, harmful or offensive.

It is the policy of the Maine Community College System to provide fair and impartial investigations, consistent with related MCCS procedures and guidance, that will protect the rights of the person(s) filing sexual harassment complaints, the person(s) complained against, and the Maine Community College System. College presidents are directed to take appropriate steps to distribute this policy statement and to inform students and employees of procedures for making complaints.

Individuals who believe that they have been victims of sexual harassment or have been accused of sexual harassment must contact their institution's Non-Discrimination Officer for information on their college's sexual harassment guidance procedure. Additionally, these individuals may also file a sexual harassment complaint with the Maine Human Rights Commission within six months of the alleged incident. Further information is available from the Maine Human Rights

Commission at State House Station 51, Augusta, Maine 04333, (207) 287-2326, and/or from the United States Department of Education, Office for Civil Rights, 33 Arch Street, Suite 900, Boston, Massachusetts 02110, tel. 617-289-0111, TTY/TTD 617-289-0063, and fax 617-289-0150.

**B. Consensual Sexual Relations**

Sexual relationships between employees and students or between certain employees within the MCCS that begin consensually can end acrimoniously. Such endings can and do subsequently lead to claims of unprofessional conduct, sexual harassment in violation of this policy, and/or a conflict of interest in violation of MCCS policy. Such claims, even if ultimately determined to be without merit, are often expensive and time-consuming for the MCCS, and difficult for the individuals involved. Accordingly, the MCCS prohibits consensual romantic or sexual relationships between employees when one employee supervises or otherwise has authority over the other employee, and between an employee and a student when the employee instructs, advises or otherwise has authority over the student. Employees who violate these prohibitions are subject to counseling and/or disciplinary action.

In addition, consensual romantic or sexual relationships between an employee and a student located on the same campus, even when the employee does not instruct, advise or otherwise have authority over the student, can give rise to the same claims described above. Consequently, the MCCS strongly discourages such relationships between an employee and a student located on the same campus.

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REFERENCES: 5 M.R.S.A. §4551– §4632, 5 M.R.S.A. §4601–§4604, U.S.C. §2000e, et seq.

DATE ADOPTED: June 24, 2009

DATE(S) AMENDED: November 29, 2012

**MAINE COMMUNITY COLLEGE SYSTEM  
PROCEDURES MANUAL**

**GENERAL ADMINISTRATION**

**Sections 201.1/202.1**

**SUBJECT: COLLEGE PROCEDURE FOR DISCRIMINATION, HARASSMENT,  
SEXUAL HARASSMENT AND AFFIRMATIVE ACTION COMPLAINTS**

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**PURPOSE: To establish a procedure for each College when receiving and investigating  
student, employee, applicant and any other complaints regarding  
discrimination, harassment, sexual harassment and affirmative action**

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**I. Introduction**

Harassment, including sexual harassment, (hereinafter collectively called “harassment”) and discrimination (including retaliation, intimidation and coercion) on the basis of race, color, national origin, age, ancestry, genetic information, sex, religion, veteran status, sexual orientation, familial status and disability (hereinafter called “discrimination”) are a violation of certain federal and/or state laws, as well as certain Maine Community College System (“MCCS”) and College policies. In addition, federal and/or state law require in some, and permit in other, instances the MCCS and Colleges to engage in affirmative action in its educational and employment activities.

Except as otherwise provided, this document establishes the procedure for each College in receiving and investigating complaints brought by a student, employee, applicant or any other person (hereinafter the “complainant”) that allege harassment or discrimination by a College student, employee, contractor or other agent (hereinafter the “respondent”). This procedure also applies to complaints regarding the College’s use of affirmative action which, for purposes of this procedure, shall be processed in the same manner as a complaint alleging discrimination.

This procedure does not apply to allegations of sexual assault against a College student. MCCS Procedure 501.1 establishes the procedure for each College in receiving and investigating complaints that allege sexual assault by a College student.

**II. Publication of this Procedure**

This procedure must be available to all employees in a location clearly designated by the College; included in the College’s Student handbook; and posted on each College’s Web site. Notice of the College’s non-discrimination statement and contact information of the College’s Non-Discrimination/Affirmative Action Officer (ND/AA Officer) and ADA compliance officers must also be posted in conspicuous locations on campus.

### **III. Reporting Discrimination and/or Harassment**

#### **A. Where to Report**

Any person who believes that he or she has been discriminated against or harassed (“complainant”) must make a timely report to the College’s ND/AA Officer as set forth herein.

If the ND/AA Officer is the person alleged to have discriminated against or harassed, the complainant should report the complaint to the College President. The College President will then assign a person other than the ND/AA Officer to investigate the complaint.

If the College President is the person alleged to have discriminated against or harassed, the role of the College President in this procedure will be executed by the MCCS Director of Human Resources, who may be contacted at 323 State Street, Augusta, Maine, 04330; ph: 207-629-4000, or that Director’s designee.

#### **B. When to Report**

A complainant should report their complaint as soon as possible after the first date of the alleged discrimination or harassment, and must report, if at all, not later than 180 calendar days after the last date of the alleged discrimination or harassment.

#### **C. How to Report**

A complaint may be made orally or in writing, and it must be particular. It must disclose the identity of the person(s) alleged to have engaged in discrimination or harassment (“respondent”), and the location(s), date(s) and description of the alleged acts. If a complainant discusses a complaint with an employee of the College, that employee should promptly refer the complainant to the ND/AA Officer and inform that Officer of that employee’s knowledge of that complaint.

The College cannot take complaints “off the record.” Once the College receives such information, it has a duty to investigate and possibly take action even if, at the time of the complaint, the complainant does not want the College to do either. Unless the complainant signs a written statement specifying withdrawal of the complaint, the complainant may not be deemed to have withdrawn her or his complaint.

A report filed under this procedure will not be deemed to be a “grievance” under any applicable collective bargaining agreement. If a complainant seeks to file a collective bargaining-based grievance, the complainant must do so in addition to complying with this procedure.

#### **D. Disability Accommodation Complaints**

A person whose discrimination complaint relates to a disability accommodation must first comply with the College's ADA or Disability Services policy and procedure, and present any such concerns to the College's ADA or Disability Coordinator prior to reporting a complaint to the ND/AA Officer.

#### **IV. Investigation of Complaints**

The following procedures apply to the investigation of discrimination and harassment complaints. In some instances, the College President or MCCS Director of Human Resources may authorize a qualified person other than the ND/AA Officer to conduct the investigation and/or act upon its findings, which person shall then assume the ND/AA's duties as designated.

##### **A. Informal Procedure**

The ND/AA Officer will attempt to resolve a complaint of discrimination or harassment as informally as possible by seeking information and cooperation from both the complainant and respondent.

If the parties agree to use this informal procedure, such procedure will be completed within 20 working days of the ND/AA Officer's receipt of the complaint. This timeframe may be extended by the ND/AA Officer as the Officer deems reasonably necessary, provided that any such extension does not impose undue delay, and provided further that the ND/AA Officer documents the dates of, and reasons for, each delay.

If either the complainant or respondent declines to use the informal procedure, or such informal procedure is not otherwise successful, the ND/AA Officer will use the following formal procedure.

##### **B. Formal Procedure**

The formal procedure, if used, will be completed within 60 calendar days of the ND/AA Officer receipt of a complaint under this procedure.

##### **1. Within 10 working days of receiving the complaint**

Within 10 working days of receiving the complaint, the ND/AA Officer will:

- a. meet with the complainant to discuss the complaint;
- b. provide to the respondent that notice of the complaint as may be required by either the Student Code of Conduct or the collective bargaining agreement;
- c. begin to collect evidence and arrange interviews of witnesses; and
- d. interview the respondent.

## **2. Within 5 working days of completing the investigation**

An investigation is complete when the pertinent supervisor (e.g., Dean of Students, College President) and ND/AA Officer determine that no additional fact finding is required. Within 5 working days of completing the investigation, the College will decide upon its response to the complaint and so inform the complainant and respondent of the nature of that response. Personnel privacy obligations may prevent the College from disclosing to the complainant the details of the specific action that the College will take.

## **3. Extension and Coordination of Above Timeframes**

The timeframes specified above may be extended by the ND/AA Officer as the Officer deems reasonably necessary, provided that any such extension does not impose undue delay, and provided further that the ND/AA Officer documents the dates of, and reasons for, each delay.

In addition, this formal procedure must be applied as consistently as possible with the related procedures set forth in the MCCS Student Code of Conduct and MCCS collective bargaining agreements. When a timeframe specified in this formal procedure conflicts with a specific timeframe set forth in the Student Code of Conduct or collective bargaining agreement, the timeframe in the Code and agreements shall control, provided that such control shall not unduly delay the completion of the College's investigation under this procedure.

### **C. Interim Steps**

While a complaint is under review, the ND/AA Officer may recommend to the appropriate supervising authority at the College that such authority take, consistent with the applicable procedures and standards set forth in the College's Student Code of Conduct and/or any employment policy or agreement, any appropriate or necessary interim action such as removing the complainant from contact with the respondent.

### **D. Limit on Confidentiality**

The College may need, as part of its investigation, to disclose the complainant's name, statements and allegations to certain relevant other persons, including the alleged discriminator or harasser.

## **V. Action Upon Findings from the Investigation**

If the College determines that it will take disciplinary or other responsive action as a result of its investigation, that action will be taken without undue delay as follows.

### **A. Action Against a Student**

To implement discipline or other action in response to complaints against a student, the College will use the MCCS Student Code of Conduct.

### **B. Action Against an Employee**

To implement discipline or other action in response to complaints against an employee, the College will use the applicable collective bargaining agreement or other pertinent employment policy.

### **C. Action Against Others**

To implement discipline or other action in response to complaints against a contractor or other party, the College will consult with the College President.

### **D. Action to Address Disability Accommodations**

To address the College's provision of disability accommodation, the College will follow its pertinent ADA or Disability Services protocol.

## **VI. Appeals of College Response to Complaint**

Any appeals from action taken under *Section V* above shall be taken pursuant to the applicable Code, collective bargaining agreement or employment policy. Only if those sources do not provide an appeal process to an affected party, then the following appeal process shall apply.

Within 10 working days of receiving the report of the investigation, a party to the complaint who is aggrieved by the decision may appeal ("appellant") to the College President (or to the MCCS Director of Human Resources if the College President is the respondent to the complaint; see *Section III.A.*). Within 10 working days of receipt of the appeal, the College President will meet with the appellant to discuss the appeal. Within 10 working days after the meeting, the College President will inform the appellant and other party(s) to the complaint of the College President's decision on the appeal. Such timeframes may be extended by the College President as the President deems reasonably necessary, provided any such extension does not impose undue delay, and provided further that the College President documents the dates of, and reasons for, each delay.

## **VII. External Complaint Procedures**

In addition to, or in place of, filing a complaint through this procedure, a complainant has the right to file a private lawsuit or a complaint with outside agencies. For example, a complaint alleging discrimination in the College's education programs and/or activities under Title VI of the Civil Rights Act of 1964 (race, color, national origin), the Age Discrimination Act of 1975 (age), Title IX of the Education Amendments of 1972 (sex), Section 504 of the Rehabilitation Act of 1973 (disability), and/or Title II of the Americans with Disabilities Act of 1990 (disability) may be filed with the United States Department of Education, Office for Civil Rights, 33 Arch Street, Suite 900, Boston, MA 02110, telephone 617.289.0111, TTY/TDD 617.289.0063, fax 617.289.0150, e-mail [OCR.Boston@ed.gov](mailto:OCR.Boston@ed.gov), internet <http://www.ed.gov/about/offices/list/ocr/index.html?src=oc>. The Federal government agency that has the responsibility for enforcing anti-discrimination laws in regard to employment is the United States Equal Employment Opportunity Commission, which may be contacted at 475 Government Center, Boston, MA 02203, telephone 617.565.3200 or 1.800.669.4000, TTY 617.565.3204 or 1.800.669.6820, fax 617.565.3196, internet <http://www.eeoc.gov/>. The State agency in Maine that has the responsibility for enforcing anti-discrimination laws is the Maine Human Rights Commission, which may be contacted at 51 State House Station, Augusta, ME 04333-0051, telephone 207.624.6050, TTY/TDD 207.624.6064, fax 207.624.6063, internet <http://www.state.me.us/mhrc/index.shtml>.

## **VIII. Retaliation, Intimidation and Coercion**

Retaliation, intimidation and/or coercion against any person who in good faith either files a discrimination or harassment complaint or otherwise participates in the complaint process is a violation of law and MCCS policy. Complaints alleging retaliation of any kind shall be reported immediately to the ND/AA Officer as set forth in *Section III* of this procedure.

## **IX. Other Provisions**

### **A. Communication with Disabled Persons**

In implementing this procedure, the College must communicate with a complainant who has a disability in a format accessible to the complainant.

### **B. Record Retention**

Unless otherwise directed by the MCCS Human Resources Director or MCCS General Counsel, the AA/ND College will retain a record of all information, complaints, decisions, appeals and responses handled under this procedure for at least three (3) years.

### **C. Interpretation of this Procedure**

This Procedure intends to make as clear and consistent as practical the College's best practices in complying with state and federal laws. This procedure is not intended, and shall not be construed, to create or expand substantive or procedural rights under any law.

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REFERENCES:                   MCCS Policies 201 and 202

DATE ADOPTED:               June 28, 2006

DATE(S) AMENDED:          January 26, 2010; November 15, 2016