



MASSACHUSETTS COLLEGE *of* PHARMACY
and HEALTH SCIENCES

MCPHS Protection from Sex Discrimination and Sex-Based Harassment for All Faculty, Students, Employees, and Third Parties Policy

Pursuant to the Requirements of the 2024 Title IX Regulation

Office of Inclusion
TitleIX@mcphs.edu

BASED ON THE ATIXA PREGNANCY AND RELATED CONDITIONS MODEL POLICY.
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MASSACHUSETTS COLLEGE OF PHARMACY AND HEALTH SCIENCES PROTECTION FROM SEX DISCRIMINATION AND SEX-BASED HARASSMENT POLICY FOR ALL FACULTY, STUDENTS, EMPLOYEES, AND THIRD PARTIES¹ (Hereinafter, “the Policy”)

1. Purpose

MCPHS is committed to providing an educational and employment environment that is free from sex discrimination, sex-based harassment, and retaliation for engaging in protected activity.

MCPHS values and upholds the equal dignity of all members of its community and strives to balance the rights of the Parties in the resolution process during what is often a difficult time for all involved.

To ensure compliance with federal, state, and local civil rights laws and regulations, and to affirm its commitment to promoting the goals of respect, fairness and equity in all aspects of the education program or activity, MCPHS has developed policies and procedures that provide for prompt and equitable resolution of allegations of sex discrimination, sex-based harassment and retaliation.

2. Nondiscrimination on The Basis of Sex

MCPHS seeks to comply with all federal, state, and local laws, regulations, and ordinances prohibiting sex discrimination in private post-secondary education institutions.

MCPHS does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of actual or perceived sex.

This Policy covers Sex Discrimination and Sex-Based Harassment in MCPHS’ education programs and activities.

MCPHS will promptly and effectively address any such discrimination of which it has Knowledge or Notice using the MCPHS Resolution Process for Alleged Violations of Prohibited Sex Discrimination Involving Students and Employees, Sex-Based Harassment not Involving Students, and Retaliation, and the MCPHS Resolution Process for Alleged Violations of Prohibited Sex-Based Harassment Involving Students and Retaliation.

¹ Third parties include any person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination and who was participating or attempting to participate in the university’s education program or activity at the time of the alleged sex discrimination.

3. Title IX Contact

MCPHS has appointed the Title IX Coordinator to coordinate MCPHS' compliance with federal, state, and local civil rights laws and ordinances:

*For sex discrimination and sex-based harassment allegations:
Title IX Coordinator*

Rachel Andoscia
Title IX Coordinator
Office of Inclusion
White, 303
179 Longwood Avenue
Boston, MA 02115
617-732-1048
rachel.andoscia@mcphs.edu
<https://www.mcphs.edu/about/legal/title-ix>

The Title IX Coordinator is responsible for providing comprehensive sex discrimination education and training; coordinating MCPHS' timely, thorough, and fair response, investigation, and resolution of all alleged prohibited conduct under this Policy; and monitoring the effectiveness of this Policy and related procedures to ensure an education and employment environment free from sex discrimination, sex-based harassment, and retaliation. The Title IX Coordinator oversees MCPHS' compliance with Title IX.

MCPHS recognizes that allegations under this Policy may include multiple forms of sex discrimination and sex-based harassment, as well as violations of other MCPHS policies. They may involve various combinations of students, employees, and other members of the MCPHS community and may require the simultaneous attention of multiple MCPHS departments. Accordingly, all MCPHS departments will share necessary information, combine efforts, and otherwise collaborate, to the maximum extent permitted by law and consistent with other applicable MCPHS policies, to provide uniform, consistent, efficient, and effective responses to alleged sex discrimination, sex-based harassment, and retaliation.

4. External Contact Information

Concerns about MCPHS' application of this Policy and compliance with certain federal and state civil rights laws may also be addressed to:

Office for Civil Rights (OCR)
U.S. Department of Education

400 Maryland Avenue, SW
Washington, D.C. 20202-1100
Customer Service Hotline #: (800) 421-3481
Facsimile: (202) 453-6012
TDD#: (877) 521-2172
Email: OCR@ed.gov
Web: <https://www.ed.gov/about/ed-offices/ocr>

Office for Civil Rights (OCR)
Boston Office
8th Floor, 5 Post Office Square
Boston, MA, 02109-3921
Email: OCR.Boston@ed.gov

U.S. Department of Health and Human Services Office for Civil Rights
New England Region
Government Center, J.F. Kennedy Federal Building - Room 1875
Boston, MA, 02203
Email: ocrmail@hhs.gov

For Complaints involving employee-on-employee conduct:

Equal Employment Opportunity Commission (EEOC)
<https://www.eeoc.gov/>

EEOC Regional Office
John F. Kennedy Federal Building, 15 New Sudbury Street, Room 475
Boston, MA, 02203
<https://www.eeoc.gov/field-office/boston/location>

Massachusetts Commission Against Discrimination (MCAD)
Boston Office
One Ashburton Place
Sixth Floor, Room 601
Boston, MA 02108
(617) 994.6000
<https://www.mass.gov/orgs/massachusetts-commission-against-discrimination>

Worcester Office
455 Main Street, Room 101
Worcester, MA 01608
(508) 779-8010
<https://www.mass.gov/orgs/massachusetts-commission-against-discrimination>

The New Hampshire Commission of Human Rights Intake Department
2 Industrial Park Drive,
Concord, NH 03301(603) 271-2767
<https://www.nh.gov/hrc/>

5. Mandated Reporting and Confidential Employees

All MCPHS faculty and employees (including student-employees), other than those deemed Confidential Employees, are Mandated Reporters and are expected to promptly report all known details of actual or suspected sex discrimination, sex-based harassment, retaliation and/or other prohibited conduct to the Title IX Coordinator immediately, although there are some limited exceptions. Supportive measures may be offered as the result of such disclosures without formal MCPHS action.

Complainants may want to carefully consider whether they share personally identifiable details with Mandated Reporters, as those details must be shared with the Title IX Coordinator.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report alleged crimes and/or Policy violations. These employees will immediately pass Notice to the Title IX Coordinator (and/or MCPHS Public Safety, if desired by the Complainant or required by law), who will act when an incident is reported to them.

The following sections describe MCPHS' reporting options for a Complainant or third-party (Including parents/guardians when appropriate):

A. Confidential Employees

There are three categories of Confidential Employees: 1) Those with confidentiality bestowed by law or professional ethics, such as lawyers, medical professionals, clergy, and mental health counselors; 2) Those whom MCPHS has specifically designated as Confidential Resources for purposes of providing support and resources to the Complainant; and 3) Those conducting human subjects research as part of a study approved by MCPHS' Institutional Review Board (IRB). For those in category 1), above, to be able to respect confidentiality, they must be in a confidential relationship with the person reporting, such that they are within the scope of their licensure, professional ethics, or confidential role at the time of receiving the Notice. These individuals will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor, elder, or individual with a disability, or when required to disclose by law or court order.

To enable Complainants to access support and resources without filing a Complaint, MCPHS has designated specific employees as Confidential Resources. Those designated by MCPHS as Confidential Resources are not required to report actual or suspected sex

discrimination, sex-based harassment, and retaliation in a way that identifies the Parties. They will, however, provide the Complainant with the Title IX Coordinator's contact information and offer options and resources without any obligation to inform an outside agency or MCPHS officials unless a Complainant has requested the information be shared.

B. Confidential Employees

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with the following Confidential Employees:

- On-campus licensed professional counselors and staff
- Confidential Resource Provider²
Dawn Ballou, MCPHS Confidential Resource Provider
Dawn.Ballou@mcphs.edu
(617) 732-2077
179 Longwood Avenue
Boston, MA 02115

[Institutional counselors](#) and/or the [Employee Assistance Program](#) are available to help free of charge and may be consulted on an emergency basis during normal business hours.

Employees who have confidentiality as described above and who receive Notice within the scope of their confidential roles will timely submit anonymous statistical information for Clery Act statistical reporting purposes unless they believe it would be harmful to their client or patient.

Failure of a Mandated Reporter, as described above in this section, to report an incident of sex discrimination, sex-based harassment, or retaliation of which they become aware is a violation of MCPHS Policy and can result in disciplinary action for failure to comply/failure to report.

² Confidential Resource Provider/Advisor is an employee or other individual designated by the university to provide information on: (1) reporting options and the effects of each option; (2) counseling services available on and off campus; (3) medical and health services available on and off campus; (4) available supportive measures; (5) disciplinary process of the university; and (6) the legal process carried out through local law enforcement agencies. Confidential Resource Provider/Advisor services are available to assist parties in a Sexual Harassment or Sexual Misconduct matter. Their services are confidential unless a party, in writing, requests certain information to be disclosed or otherwise required by state or federal law. If requested by the Complainant and/or Respondent in an alleged sexual assault matter, the Confidential Resource Provider/Advisor may arrange Supportive Measures. The Confidential Resource Provider/Advisor shall notify the parties of their rights and the university's responsibilities regarding a protection order, no contact order, and any other lawful orders issued by the university or a civil, criminal, and tribal court. The party is not required to file a written complaint to receive assistance from a Confidential Resource Provider/Advisor.

A Mandated Reporter who is themselves a target of discrimination, harassment, or other misconduct under this Policy is not required to report their own experience, though they are, of course, encouraged to do so.

In addition, Complainants may speak with individuals unaffiliated with MCPHS without concern that the Policy will require them to disclose information to the institution without permission:

- Licensed professional counselors and other medical providers
- Local rape crisis counselors
- Domestic violence resources
- Local or state assistance agencies
- Clergy/Chaplains
- Attorneys

6. Scope

This Policy only applies to alleged incidents of sex discrimination and sex-based harassment occurring on or after August 1, 2024. Any reports of sex discrimination involving alleged conduct occurring before August 1, 2024, the effective date of this policy, will be reviewed by the University to determine if the allegations constitute an offense recognized under the previous MCPHS [Protection from Sexual Harassment policy](#). Depending on the date the conduct allegedly occurred, the University will also assess whether sufficient information may exist to proceed with an investigation or any other actions. Questions regarding allegations of sex discrimination and sex-based harassment occurring prior to August 1, 2024, may be directed to the Title IX Coordinator.

This Policy applies to all faculty, employees, students, and other individuals participating in or attempting to participate in MCPHS' program or activities.

This Policy prohibits sex discrimination and sex-based harassment, all of which may be addressed in accordance with this Policy.

7. Jurisdiction

This Policy applies to MCPHS' education programs and activities (defined as including locations, events, or circumstances in which MCPHS exercises substantial control over both the Respondent and the context in which the conduct occurred), circumstances where MCPHS has disciplinary authority, and to misconduct occurring within any building owned or controlled by

a MCPHS-recognized student organization. A Complainant does not have to be a member of the MCPHS community to file a Complaint at the discretion of the Title IX Coordinator.

This Policy may also apply to the effects of off-campus misconduct that limit or deny a person's access to MCPHS' education program or activities. Online conduct when the conduct affects a substantial MCPHS interest may also be prohibited under this Policy.

A substantial MCPHS interest includes:

- 1) Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law.
- 2) Any situation in which it is determined that the Respondent poses an imminent and serious threat to the health or safety of any student, employee, or other individual.
- 3) Any situation that significantly impinges upon the rights, property, or achievements of others, significantly breaches the peace, and/or causes social disorder.
- 4) Any situation that substantially interferes with MCPHS' educational interests or mission.

For disciplinary action to be issued under this Policy, the Respondent must be an MCPHS faculty member, student, or employee at the time of the alleged incident. MCPHS can also assist in contacting MCPHS Public Safety if the individual would like to file a police report about criminal conduct.

All vendors serving MCPHS through third-party contracts will be subject to these policies and procedures to which their employer shall agree to be bound by their contracts.

8. Supportive Measures

MCPHS will offer and implement appropriate and reasonable supportive measures to the Parties upon Notice of alleged sex discrimination, sex-based harassment, and retaliation. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and reasonably available. They are offered, without fee or charge to the Parties, to restore or preserve access to MCPHS' education program or activity, including measures designed to protect the safety of all Parties and/or MCPHS' educational environment and/or to deter sex discrimination, sex-based harassment, and retaliation.

The Title IX Coordinator promptly makes supportive measures available to the Parties upon receiving Notice/Knowledge or a Complaint. At the time that supportive measures are offered if a Complaint has not been filed, MCPHS will inform the Complainant that they may file a Complaint with MCPHS either at that time or in the future. The Title IX Coordinator will work with a party to ensure that their wishes are considered with respect to any planned and implemented supportive measures.

MCPHS will maintain the confidentiality of the supportive measures, provided that confidentiality does not impair MCPHS' ability to provide those supportive measures. MCPHS will act to ensure as minimal an academic/occupational impact on the Parties as possible. MCPHS will implement measures that do not unreasonably burden any party.

These actions may include, but are not limited to:

- Referral to counseling
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation assistance
- Implementing contact restrictions (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass, Persona Non-Grata (PNG), or Be-On-the-Lookout (BOLO) orders
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Administrator

Violations of no-contact orders or other restrictions may be referred to appropriate student or employee conduct processes for enforcement or added as collateral misconduct allegations to an ongoing Complaint under this Policy.

The Parties are provided with a timely opportunity to seek modification or reversal of MCPHS' decision to provide, deny, modify, or terminate supportive measures applicable to them. A request to do so should be made in writing to the Title IX Coordinator. MCPHS typically renders decisions on supportive measures within seven (7) business days of receiving a request and shares a determination with the impacted party(ies) and the Title IX Coordinator.

9. Online Sex-Based Harassment and Misconduct

MCPHS policies are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on MCPHS'

education program and activities, or when they involve the use of MCPHS networks, technology, or equipment.

Although MCPHS may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported to MCPHS, it may engage in a variety of means as appropriate to address and mitigate the effects. These may include the use of the Resolution Process to address off-campus conduct whose effects contribute to limiting or denying a person access to MCPHS' education program or activity.

10. Inclusion Related to Gender Identity/Expression

MCPHS strives to ensure that all individuals are safe, included, and respected in their education and employment environments, regardless of their gender identity or expression, including intersex, nonbinary, transgender, agender, two-spirit, and gender-diverse students and employees.³

MCPHS does not tolerate discrimination or harassment based on gender identity or expression. If a member of the MCPHS community believes they have been subjected to discrimination under this Policy, they should follow the appropriate reporting process described herein.

In upholding the principles of equity and inclusion, MCPHS supports the full integration and healthy development of those who are gender diverse and seeks to eliminate any stigma related to gender identity and expression.

MCPHS is committed to fostering a climate where all identities are valued, contributing to a more vibrant and diverse community. MCPHS will administratively address issues that some students and employees, including those identifying as intersex, transgender, agender, nonbinary, and gender diverse, may confront as they navigate systems originally designed around the assumption that gender is binary. As our society's understanding of gender evolves, so do MCPHS' processes and policies.

Concepts like misgendering and deadnaming may not be familiar to all, but understanding them is essential to MCPHS' goal of being as welcoming and inclusive a community as possible.

Misgendering or mispronouncing is the intentional or unintentional use of pronouns or identifiers that are different from those used by an individual. Unintentional misgendering is usually resolved with a simple apology if someone clarifies their pronouns for you. Intentional

³ MCPHS also has the following policies: Chosen Name Policy, Gender Identity Policy, and Pronoun Policy. To learn more about these policies, visit <https://www.mcphs.edu/about/diversity-equity-and-inclusion/policies-and-resources>

misgendering is inconsistent with the type of community we hold ourselves out to be and may constitute a Policy violation if the effect is greater than *de minimis*⁴ harm.

Deadnaming is using someone's birth-assigned (cisgender) name, rather than the name they have chosen. Deadnaming is also inconsistent with the type of community we hold ourselves out to be and may constitute a Policy violation if the effect is greater than *de minimis* harm.

This Policy should be interpreted consistent with the goals of maximizing the inclusion of intersex, transgender, transitioning, agender, nonbinary, and gender-diverse students and employees, including:

- Maintaining the privacy of all individuals consistent with the law
- Ensuring all students have equal access to educational programming, activities, and facilities, including restrooms and locker rooms
- Ensuring all employees have equal access to employment opportunities and work, service, or health-related facilities
- Providing professional development for employees and education for students on topics related to gender inclusion
- Encouraging all students and employees to respect the pronoun usage and identities of all members of the MCPHS community

When conflicts arise between the right of community members to be free from gender-identity discrimination and those exercising their right to religious freedom, MCPHS will try to balance rights and interests to find mutually agreeable outcomes. When that is not possible, MCPHS will offer remedial solutions or enforce its Policies as appropriate.

11. Prohibited Conduct

Students and employees are entitled to an educational and employment environment free of sex discrimination, sex-based harassment, and retaliation. This Policy is not meant to inhibit or prohibit educational content or discussions inside or outside the classroom that include germane but controversial or sensitive subject matters protected by academic freedom.

The sections below describe the specific forms of prohibited sex discrimination, sex-based harassment, and retaliation that are prohibited under MCPHS Policy. When speech or conduct

⁴ The 2024 Title IX Final Rule establishes a "de minimis harm" standard that states that treating people differently or separating them based on sex, including gender identity, is discrimination if it causes more than de minimis harm. For example, the rule states that preventing a student from participating in an educational program or activity that aligns with their gender identity causes more than de minimis harm and, therefore, violates Title IX. The rule also prohibits separation or different treatment based on sex if it causes more than de minimis harm.

is protected by academic freedom, it will not be considered a violation of MCPHS Policy, though supportive measures will be offered to those impacted.

All offense definitions below encompass actual and/or attempted offenses.

As appropriate, MCPHS may consolidate complaints or issues, in which case the Notice of Investigation and Allegation (NOIA) will clearly indicate the full set of allegations.

Violation of any other MCPHS policies may constitute discrimination or harassment when motivated by actual or perceived protected characteristic(s) and result in a limitation or denial of employment or educational access, benefits, or opportunities.

A. Sex Discrimination

Sex discrimination is different treatment with respect to a person's employment or participation in an education program or activity based, in whole or in part, upon the person's actual or perceived sex, including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity

Discrimination can take two primary forms:

1) Disparate Treatment Discrimination:

- Any intentional differential treatment of a person or persons that is based on a person's actual or perceived sex and that:
 - Excludes a person from participation in;
 - Denies the person benefits of; or
 - Otherwise adversely affects a term or condition of a person's participation in an MCPHS program or activity.

2) Disparate Impact Discrimination:

- Disparate impact occurs when policies or practices that appear to be neutral unintentionally result in a disproportionate impact on the basis of sex that:
 - Excludes an individual from participation in;
 - Denies the individual benefits of; or
 - Otherwise adversely affects a term or condition of an individual's participation in an MCPHS program or activity

B. Sex-based Harassment (Applicable under Title IX, Title VII, and the Fair Housing Act)

Sex-based Harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex,⁵ including sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity; sexual assault, dating violence, domestic violence, and stalking.

3) Quid Pro Quo Harassment:

- an employee agent, or other person authorized by MCPHS,
- to provide an aid, benefit, or service under MCPHS' education program or activity,
- explicitly or impliedly conditioning the provision of such aid, benefit, or service,
- on a person's participation in unwelcome sexual conduct.

4) Hostile Environment Harassment:

- unwelcome sex-based conduct, that
- based on the totality of the circumstances,
- is subjectively and objectively offensive, and
- is so severe or pervasive,
- that it limits or denies a person's ability to participate in or benefit from MCPHS' education program or activity

MCPHS reserves the right to address offensive conduct and/or harassment that (1) does not rise to the level of creating a hostile environment, or (2) that is of a generic nature and not based on a protected characteristic. Addressing such conduct will not result in the imposition of discipline under MCPHS Policy, but may be addressed through respectful conversation, remedial actions, education, effective Alternative Resolution, and/or other Informal Resolution mechanisms.

For assistance with Alternative Resolution and other Informal Resolution techniques and approaches, contact the Title IX Coordinator.

5) Sexual Assault⁶:

a. Rape:

- Penetration, no matter how slight,
- of the vagina or anus of the Complainant,
- with any body part of the Respondent or by Respondent's use of an object, or

⁵ Throughout this Policy, "on the basis of sex" means conduct that is sexual in nature, or that is directed to the Complainant because of his/her/their actual or perceived sex or gender identity.

⁶ This would include having another person touch you sexually, forcibly, and/or without their consent.

- oral penetration of the Complainant by a sex organ of Respondent,
 - without the consent of the Complainant.
- b. Fondling:
- The touching of the private body parts of the Complainant (buttocks, groin, breasts),
 - by the Respondent for the purpose of sexual gratification,
 - without the consent of the Complainant,
 - including instances where the Complainant is incapable of giving consent because of their age or because of a temporary or permanent mental incapacity.
- c. Incest:
- Sexual intercourse,
 - between persons who are related to each other,
 - within the degrees wherein marriage is prohibited by MA or NH law.
- d. Statutory Rape:
- Sexual intercourse,
 - with a person under the statutory age of consent of 16.
6. Dating Violence, defined as:
- a. violence,
 - b. on the basis of sex,
 - c. committed by a person,
 - d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - i. The existence of such a relationship shall be determined based on the Complainant’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
 - a) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - b) Dating violence does not include acts covered under the definition of domestic violence.

7. Domestic Violence⁷ defined as:

⁷ To categorize an incident as Domestic Violence under this Policy, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

- e. violence,
- f. on the basis of sex,
- g. committed by a current or former spouse or intimate partner of the Complainant,
- h. by a person with whom the Complainant shares a child in common, or
- i. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- j. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of MA or NH, or
- k. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of MA or NH.

8) Stalking, defined as:

- l. engaging in a course of conduct,
- m. on the basis of sex,
- n. directed at the Complainant, that
 - i. would cause a reasonable person to fear for the person's safety, or
 - ii. the safety of others; or
 - iii. Suffer substantial emotional distress.

For the purposes of this definition—

- Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent 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.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

C. Sexual Misconduct

1) Sexual Exploitation:⁸

- A person taking non-consensual or abusive sexual advantage of another, that does not constitute Sex-based Harassment as defined above,
- for their own benefit or for the benefit of anyone other than the person being exploited.

⁸ This offense is not classified under Title IX as "Sex-based harassment," but it is included here in this Policy as a tool to address a wider range of behaviors.

Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
- Invasion of sexual privacy (e.g., doxing)
- Knowingly making an unwelcome disclosure of (or threatening to disclose) a person's sexual orientation, gender identity, or gender expression
- Taking pictures, video, or audio recording of another person in a sexual act, or in any other sexually related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity; or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of non-consensual pornography
- Prostituting another person
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection
- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
- Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing)
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
- Knowingly soliciting a minor for sexual activity
- Engaging in sex trafficking
- Knowingly creating, possessing, or disseminating child sexual abuse images or recordings
- Creating or disseminating synthetic media, including images, videos, or audio representations of individuals doing or saying sexually-related things that never happened, or placing identifiable real people in fictitious pornographic or nude situations without their consent (i.e., Deepfakes)

D. Other Prohibited Conduct

1) Retaliation:

- Adverse action, including intimidation, threats, coercion, or discrimination,
- against any person,
- by MCPHS, a student⁹, employee, or a person authorized by MCPHS to provide aid, benefit, or service under MCPHS' education program or activity,
- for the purpose of interfering with any right or privilege secured by law or Policy, or
- because the person has engaged in protected activity, including reporting information, making a Complaint, testifying, assisting, or participating or refusing to participate in any manner in an investigation or Resolution Process under the Protection from Sex Discrimination and Sex-Based Harassment for All Faculty, Students, Employees, and Third Parties Policy, including an Informal Resolution process, or in any other appropriate steps taken by MCPHS to promptly and effectively end any sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects.

The exercise of rights protected under the First Amendment does not constitute retaliation. It is also not retaliation for MCPHS to pursue Policy violations against those who make materially false statements in bad faith in the course of a resolution under the Protection from Sexual Discrimination and Harassment Policy. However, the determination of responsibility, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.

2) Unauthorized Disclosure:¹⁰

- Distributing or otherwise publicizing materials created or produced during an investigation or Resolution Process except as required by law or as expressly permitted by MCPHS; or
- publicly disclosing institutional work product that contains personally identifiable information without authorization or consent.

3) Failure to Comply/Process Interference

- Intentional failure to comply with the reasonable directives of the Title IX Coordinator in the performance of their official duties, including with the terms of a no contact order

⁹ Retaliation includes retaliation by a student against another student.

¹⁰ Nothing in this section restricts the ability of the Parties to: obtain and present evidence, including by speaking to witnesses (as long as it does not constitute retaliation under this Policy), consult with their family members, confidential resources, or Advisors; or otherwise prepare for or participate in the Resolution Process.

- Intentional failure to comply with emergency removal or interim suspension terms
- Intentional failure to comply with sanctions
- Intentional failure to adhere to the terms of an Informal Resolution agreement
- Intentional failure to comply with mandated reporting duties as defined in this Policy
- Intentional interference with the Resolution Process, including but not limited to:
 - Destruction of or concealing of evidence
 - Actual or attempted solicitation of knowingly false testimony or providing false testimony or evidence
 - Intimidating or bribing a witness or party

12. Sanction Ranges

The following sanction ranges apply for Prohibited Conduct under this Policy. Sanctions can be assigned outside of the specified ranges based on aggravating or mitigating circumstances, or the Respondent's cumulative conduct record.

- Discrimination: warning through expulsion or termination.
- Discriminatory Harassment: warning through expulsion or termination.
- Quid Pro Quo Harassment: warning through expulsion or termination.
- Hostile Environment Harassment: warning through expulsion or termination.
- Rape: suspension through expulsion or termination.
- Fondling: warning through suspension (termination for employees).
- Incest: suspension through expulsion or termination.
- Statutory Rape: warning through suspension (termination for employees).
- Stalking: probation through expulsion or termination.
- Dating/Domestic Violence: probation through expulsion or termination.
- Sexual Exploitation: warning through expulsion or termination.
- Retaliation: warning through expulsion or termination.
- Unauthorized Disclosure: warning through expulsion or termination.
- Failure to Comply/Process Interference: warning through expulsion or termination.

13. Consent, Force, and Incapacitation

As used in this Policy, the following definitions and understandings apply:

4) Consent

Consent is defined as:

- knowing, and
- voluntary, and

- clear permission
- by word or action
- to engage in sexual activity.

Individuals may perceive and experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Consent is evaluated from the perspective of what a reasonable person would conclude are mutually understandable words or actions. Reasonable reciprocation can establish consent. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to be kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, sexual activity should cease within a reasonably immediate time.

Silence or the absence of resistance alone should not be interpreted as consent. The absence of resistance does not demonstrate consent. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Consent to some sexual contact (such as kissing or fondling) cannot be assumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent. If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected. If a sexual partner shares the clear expectation for the use of a condom or to avoid internal ejaculation, and those expectations are not honored, the failure to use a condom, remove a condom, or internal ejaculation can be considered an act of sexual assault.

Proof of consent or non-consent is not a burden placed on either party involved in a Complaint. Instead, the burden remains on MCPHS to determine whether its

Policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged misconduct occurred and any similar and previous patterns that may be evidenced.

Going beyond the boundaries of consent is prohibited. Thus, unless a sexual partner has consented to slapping, hitting, hair pulling, strangulation, or other physical roughness during otherwise consensual sex, those acts may constitute dating violence or sexual assault.¹¹

2) Force

Force is the use of physical violence and/or physical imposition to gain sexual access. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Force is conduct that, if sufficiently severe, can negate consent.

Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” which elicits the response, “Okay, don’t hit me. I’ll do what you want.”).

Coercion is unreasonable pressure for sexual activity. Coercive conduct, if sufficiently severe, can render a person’s consent ineffective, because it is not voluntary. When someone makes clear that they do not want to engage in sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive. Coercion is evaluated based on the frequency, intensity, isolation, and duration of the pressure involved.

3) Incapacitation

Incapacitation is a state where a person is incapable of giving consent. An incapacitated person cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, and how” of their sexual interaction). A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including because of alcohol or other drug consumption.

¹¹ Consent in relationships must also be considered in context. When Parties consent to BDSM (bondage, discipline, sadism, masochism) or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual.

This Policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating substances.

Incapacitation is determined through consideration of all relevant indicators of a person's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

If the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated, the Respondent is not in violation of this Policy. "Should have known" is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

14. Standard of Proof

MCPHS uses the preponderance of the evidence standard of proof when determining whether a Policy violation occurred. This means that MCPHS will decide whether it is more likely than not, based upon the available information at the time of the decision, that the Respondent is in violation of the alleged Policy violation(s).

15. Reports/Complaints of Sex Discrimination, Sex-Based Harassment, and Retaliation

A Report provides notice to MCPHS of an allegation or concern about sex discrimination, sex-based harassment, and retaliation and provides an opportunity for the Title IX Coordinator to provide information, resources, and supportive measures. A Complaint provides notice to MCPHS that the Complainant would like to initiate an investigation or other appropriate resolution procedures. A Complainant or individual may initially make a report and may decide at a later time to make a Complaint. Reports or Complaints of sex discrimination, sex-based harassment, and retaliation may be made using any of the following options:

- 1) File a Complaint with, or give verbal Notice directly to, the Title IX Coordinator. Such a Complaint may be made at any time (including during non-business hours) by using the MCPHS hotline, by email address, or by mail to the office of the Title IX Coordinator listed in this Policy:
 - Rachel Andoscia, Title IX Coordinator

Reporting carries no obligation to initiate a Complaint, and in most situations, MCPHS is able to respect a Complainant's request not to initiate a resolution process. However, there

may be circumstances, allegations of severe misconduct, or a compelling threat to health and/or safety, where MCPHS may need to initiate a resolution process. If a Complainant does not wish to file a Complaint, MCPHS will maintain the privacy of information to the extent possible. The Complainant should not fear a loss of confidentiality by giving Notice that allows MCPHS to discuss and/or provide supportive measures, in most circumstances.

- 2) Report any incidents involving MCPHS students, faculty, staff, administrators, vendors, or campus visitors—whether they occur on or off-campus using the online [Sexual Misconduct Reporting Form](#). All forms of discrimination, sex-based harassment, and sexual misconduct should be reported.
- 3) Report using the MCPHS Compliance Hotline at (877) 472-2110. The hotline is anonymous, toll-free, 24 hours a day, 7 days a week to report concerns.

16. Time Limits on Reporting

There is no time limitation on providing Notices/Complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to MCPHS' jurisdiction and/or significant time has passed, the ability to investigate, respond, and/or provide remedies may be more limited or impossible.

Acting on Notices/Complaints significantly impacted by the passage of time is at the Title IX Coordinator's discretion; they may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

17. False Allegations and Evidence

Deliberately false and/or malicious accusations under this Policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations made in good faith, but are ultimately shown to be erroneous or do not result in a determination of a Policy violation.

Additionally, witnesses and Parties who knowingly provide false evidence, tamper with or destroy evidence, or deliberately mislead an official conducting an investigation or resolution process can be subject to discipline under appropriate MCPHS policies.

18. Confidentiality/Privacy

MCPHS makes every effort to preserve the Parties' privacy. MCPHS will not share the identity of any individual who has made a Complaint of sex discrimination, sex-based harassment, and retaliation; any Complainant; any individual who has been reported to be the perpetrator of sex discrimination, sex-based harassment, and retaliation; any Respondent; or any witness, except as permitted by, or to fulfill the purposes of, applicable laws and regulations (e.g., Title IX), Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, or as

required by law; including any investigation, or resolution proceeding arising under these policies and procedures.^{12,13} Additional information regarding confidentiality and privacy can be found in Appendix B.

Unauthorized Disclosure of Information

Parties and Advisors are prohibited from disclosing information obtained by MCPHS through the Resolution Process, to the extent that information is the work product of MCPHS (meaning it has been produced, compiled, or written by MCPHS for purposes of its investigation and resolution of a Complaint), without authorization. It is also a violation of MCPHS Policy to publicly disclose institutional work product that contains a party or witness's personally identifiable information without authorization or consent. Violation of this Policy is subject to significant sanctions.

19. Emergency Removal/Interim Actions/Leaves

MCPHS can act to remove a student Respondent accused of Sex Discrimination or Sex-based harassment, and retaliation from its education program or activities, partially or entirely, on an emergency basis when an individualized safety and risk analysis has determined that an imminent and serious threat to the health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator and may be done in conjunction with the other MCPHS Officials using its standard objective violence risk assessment procedures. Employees are subject to existing procedures for interim actions and leaves, which are available in the [Employee Handbook](#).

20. Federal Timely Warning Obligations

MCPHS must issue timely warnings for reported incidents that pose a serious or continuing threat of bodily harm or danger to members of the MCPHS community.

MCPHS will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

21. Amnesty

¹² 20 U.S.C. 1232g

¹³ 34 C.F.R. § 99

MCPHS community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to give Notice to MCPHS officials or participate in resolution processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the MCPHS community that Complainants choose to give Notice of misconduct to MCPHS officials, that witnesses come forward to share what they know, and that all Parties be forthcoming during the process.

To encourage reporting and participation in the process, MCPHS offers Parties and witnesses amnesty for minor policy violations related to the incident, such as underage alcohol consumption or the use of illicit drugs. Granting amnesty is a discretionary decision made by MCPHS, and amnesty does not apply to more serious allegations, such as physical abuse of another or illicit drug distribution.

A. Students

MCPHS also maintains an amnesty policy for students in addition to witnesses who offer help to others in need.

B. Employees

Sometimes, employees are hesitant to report sex discrimination, sex-based harassment, and retaliation they have experienced for fear of getting in trouble themselves. MCPHS may, at its discretion, offer employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident.

22. Preservation of Evidence

The preservation of evidence is critical to potential criminal prosecution and to obtaining restraining/protective orders, and it is particularly time-sensitive. MCPHS will inform the Complainant of the importance of preserving evidence by taking actions such as the following:

Sexual Assault

- Seek forensic medical assistance at the nearest hospital, ideally within 120 hours of the incident (sooner is better).
- Avoid urinating, showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.

- If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
- If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence) or a secure evidence container (if provided one by law enforcement)
- Seeking medical treatment can be essential, even if it is not for the purposes of collecting forensic evidence.

Stalking/Dating Violence/Domestic Violence/Sex-Based Harassment

- Evidence in the form of text and voice messages will be lost in most cases if the Complainant changes their phone number.
 - Make a secondary recording of any voice messages and/or save the audio files to a cloud server.
 - Take screenshots and/or a video recording of any text messages or other electronic messages (e.g., Instagram, Snapchat, Facebook).
- Save copies of email and social media correspondence, including notifications related to account access alerts.
- Take timestamped photographs of any physical evidence, including notes, gifts, etc., in place, when possible.
- Save copies of any messages, including those showing any request for no further contact.
- Obtain copies of call logs showing the specific phone number being used rather than a saved contact name if possible.

If timely, the importance of taking these actions will be discussed during the initial meeting between the complainant and the Title IX Coordinator.

23. Federal Statistical Reporting Obligations

Certain institutional officials (those deemed Campus Security Authorities) have a duty to report the following for federal statistical reporting purposes (Clery Act):

- 1) All “primary crimes,” which include criminal homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson
- 2) Hate crimes, which include any bias-motivated primary crime as well as any bias-motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property
- 3) Violence Against Women Act (VAWA-based crimes), which include sexual assault, domestic violence, dating violence, and stalking¹⁴

¹⁴ 42 U.S.C. Sections 13701 through 14040.

- 4) Arrests and referrals for disciplinary action for weapons law violations, liquor law violations, and drug law violations

All personally identifiable information is kept private, but statistical information regarding the type of incident and its general location (on- or off-campus or in the surrounding area, but no addresses are given) must be shared with Clery Act Coordinator for publication in the Annual Security Report and daily campus crime log. Campus Security Authorities include student affairs/student conduct staff, campus public safety/security, local police, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

24. Independence and Conflicts of Interest

The Title IX Coordinator manages the Title IX process and acts with independence and authority, free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this Policy and these procedures. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific Complaint, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias, conflict of interest, misconduct, or discrimination by the Title IX Coordinator, contact the MCPHS Chief Inclusion Officer. Concerns of bias, misconduct, discrimination, or a potential conflict of interest by any other MCPHS members involved in the resolution process should be raised with the Title IX Coordinator.

25. Revision of this Policy

This Policy succeeds previous policies addressing discrimination, harassment, sexual misconduct, and retaliation, though previous policies and procedures remain in force for incidents occurring before August 1, 2024. The Title IX Coordinator or trained designee, in consultation with the MCPHS Chief Inclusion Officer and the MCPHS Compliance Team, will regularly review and update this policy. MCPHS reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

If government laws or regulations change or court decisions alter the requirements in a way that impacts this document, this document will be construed to comply with the most recent government laws, regulations, or court holdings.

This document does not create legally enforceable protections beyond the protections of the background state and federal laws that frame such policies and codes, generally.

This Policy is effective 08-01-2024.

APPENDIX A: DEFINITIONS

The following definitions apply to the nondiscrimination on the basis of sex Policies and Procedures:

- *Advisor.* Any person chosen by a party, or appointed by the institution, who may accompany the party to all meetings related to the Resolution Process and advise the party on that process.
- *Title IX Coordinator.* The person with primary responsibility for overseeing and enforcing the nondiscrimination on the basis of sex Policies and Procedures. As used in these policies and procedures, the “the Title IX Coordinator” also includes their designee(s).
- *Appeal Decision-maker.* The person or panel who accepts or rejects a submitted appeal request, determines whether any of the appeal grounds are met, and directs responsive action(s), accordingly.
- *Complainant.* A student or employee who is alleged to have been subjected to conduct that could constitute discrimination, harassment, retaliation, or Other Prohibited Conduct under the Policy; or a person other than a student or employee who is alleged to have been subjected to conduct that could constitute discrimination or harassment or under the Policy and who was participating or attempting to participate in MCPHS’ education program or activity at the time of the alleged discrimination, harassment, retaliation, or Other Prohibited Conduct.
- *Complaint.* An oral or written request to MCPHS that can objectively be understood as a request for MCPHS to investigate and make a determination about the alleged Policy violation(s).
- *Confidential Employee.*
 - An employee whose communications are privileged or confidential under federal or state law. The employee’s confidential status, for purposes of this definition, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies; or
 - An employee whom MCPHS has designated as confidential under this Policy for the purpose of providing services to persons related to discrimination, harassment, retaliation, or Other Prohibited Conduct. If the employee also has a duty not associated with providing those services, the employee’s confidential status only applies with respect to information received about discrimination, harassment, retaliation, or Other Prohibited Conduct in connection with providing those services; or

- An employee who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about discrimination, harassment, retaliation, or Other Prohibited Conduct. The employee’s confidential status only applies with respect to information received while conducting the study.
- *Day.* A Business Day when MCPHS is in normal operation. All references in the Policy to days refer to Business days unless specifically noted as calendar days.
- *Education Program or Activity.* Locations, events, or circumstances where MCPHS exercises substantial control over the context in which the discrimination, harassment, retaliation, and/or or Other Prohibited Conduct occurs and also includes any building owned or controlled by a student organization that MCPHS officially recognizes.
- *Employee.* A person employed by MCPHS either full- or part-time, including student employees when acting within the scope of their employment.
- *Final Determination.* A conclusion by the standard of proof that the alleged conduct did or did not violate Policy.
- *Finding.* A conclusion by the standard of proof that the conduct did or did not occur as alleged (as in a “finding of fact”).
- *Informal Resolution.* A resolution agreed to by the Parties and approved by the Title IX Coordinator that occurs prior to a Final Determination in the Resolution Process.
- *Investigation Report.* The Investigator’s summary of all relevant evidence gathered during the investigation. Variations include the Draft Investigation Report and the Final Investigation Report.
- *Investigator.* The Title IX Coordinator or person(s) authorized by MCPHS to gather facts about an alleged violation of this Policy, assess relevance and credibility, synthesize the evidence, determine if a violation occurred, and compile this information into an Investigation Report.
- *Knowledge.* When MCPHS receives Notice of conduct that reasonably may constitute harassment, discrimination, retaliation, or Other Prohibited Conduct in its Education Program or Activity.
- *Mandated Reporter.* An MCPHS employee who is obligated by Policy to share Knowledge, Notice, and/or reports of sex discrimination, sex-based harassment, retaliation, and/or Other Prohibited Conduct with the Title IX Coordinator.¹⁵

¹⁵ Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of persons with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility under this Policy.

- *Title IX Team.* The Title IX Coordinator, Chief Inclusion Officer, and any deputy coordinators
- *Notice.* When an employee, student, or third party informs the Title IX Coordinator of the alleged occurrence of discriminatory, harassing, retaliatory, or Other Prohibited Conduct.
- *Parties.* The Complainant(s) and Respondent(s), collectively.
- *Pregnancy or Related Conditions.* Pregnancy, childbirth, termination of pregnancy, or lactation, medical conditions related thereto, or recovery therefrom.
- *Protected Characteristic.* Any characteristic for which a person is afforded protection against discrimination and harassment by law or MCPHS Policy.
- *Relevant Evidence.* Evidence that may aid the Title IX Coordinator or designee in determining whether the alleged discrimination, harassment, retaliation, or Other Prohibited Conduct occurred, or in determining the credibility of the Parties or witnesses.
- *Remedies.* Typically, post-resolution actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore or preserve equal access to MCPHS' Education Program and Activity.
- *Resolution Process.* The investigation and resolution of allegations of prohibited conduct under this Policy, including Informal Resolution, Administrative Resolution, and/or Hearing Resolution.
- *Respondent.* A person who is alleged to have engaged in conduct that could constitute discrimination based on a protected characteristic, harassment, retaliation, or Other Prohibited Conduct for engaging in a protected activity under this Policy.
- *Sanction.* A consequence imposed on a Respondent who is found to have violated this Policy.
- *Sex.* Sex assigned at birth, sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.
- *Student.* Any person who has gained admission.
- *The Title IX Coordinator.* At least one official designated by MCPHS to ensure ultimate oversight of compliance with Title IX and MCPHS' Title IX program. References to the Coordinator throughout the Policy may also encompass a designee of the coordinator for specific tasks.

APPENDIX B: PRIVACY, PRIVILEGE, AND CONFIDENTIALITY

For the purpose of this Policy, the terms *privacy*, *confidentiality*, and *privilege* have distinct meanings.

- **Privacy.** Means that information related to a complaint will be shared with a limited number of MCPHS employees who “need to know” in order to assist in providing supportive measures or evaluating, investigating, or resolving the Complaint. All employees who are involved in MCPHS’ response to Notice under this Policy receive specific training and guidance about sharing and safeguarding private information in accordance with federal and state law.
- **Confidentiality.** Exists in the context of laws or professional ethics (including Title IX) that protect certain relationships, including clinical care, mental health providers, and counselors. Confidentiality also applies to those designated by MCPHS as Confidential Employees for purposes of reports under this Policy, regardless of legal or ethical protections. When a Complainant shares information with a Confidential Employee, the Confidential Employee does not need to disclose that information to the Title IX Coordinator. The Confidential Resource will, however, provide the Complainant with the Title IX Coordinator’s contact information, assist the Complainant in reporting, if desired, and provide them with information on how the Office of Inclusion can assist them. With respect to Confidential Employees, information may be disclosed when: (1) the reporting person gives written consent for its disclosure; (2) there is a concern that the person will likely cause serious physical harm to self or others; or (3) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or persons with disabilities. Non-identifiable information may be shared by Confidential Employees for statistical tracking purposes as required by the Clery Act/Violence Against Women Act (VAWA). Other information may be shared as required by law.
- **Privilege.** Exists in the context of laws that protect certain relationships, including attorneys, spouses, and clergy. Privilege is maintained by a provider unless a court order release or the holder of the privilege (e.g., a client, spouse, parishioner) waives the protections of the privilege. MCPHS treats employees who have the ability to have privileged communications as Confidential Employees.

MCPHS reserves the right to determine which MCPHS officials have a legitimate educational interest in being informed about student-related incidents that fall under this Policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Only a small group of officials who need to know will typically be told about the Complaint. Information will be shared as necessary with Investigators, Decision-makers, Appeal Decision-makers, witnesses, the Parties, and the Parties’ Advisors. The circle of people with this knowledge will be kept as tight as possible to preserve the Parties’ rights and privacy, and release is governed by the institution’s unauthorized disclosure policy.

MCPHS may contact students' parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk but will usually consult with the student prior to doing so.

APPENDIX C: 2024 TITLE IX OFFENSE REGULATORY DEFINITIONS

1) Sexual Assault

Any sexual act, including Rape, Sodomy, Sexual Assault with an Object, or Fondling directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent; also, unlawful sexual intercourse.¹⁶

a. Rape:

- Penetration,
- without the consent of the Complainant,
- including instances where the Complainant is incapable of giving consent
 - because of their age or
 - because of their temporary or permanent mental or physical incapacity

b. Sodomy

- Oral or anal penetration
- Of the Complainant by the Respondent
- without the consent of the Complainant,
- including instances where the Complainant is incapable of giving consent
 - because of their age or
 - because of their temporary or permanent mental or physical incapacity

c. Sexual Assault with an Object

- Respondent's use of an object or instrument
- to unlawfully penetrate, however slightly, the genital or anal opening
- of the body of the Complainant,
- without the consent of the Complainant,
- including instances where the Complainant is incapable of giving consent
 - because of their age or
 - because of their temporary or permanent mental or physical incapacity

d. Fondling:

- The touching of the private body parts (breasts, buttocks, groin) of the Complainant by the Respondent
- or causing the Complainant to touch the Respondent's private body parts
- intentionally for a sexual purpose

¹⁶ This definition of sexual assault does not constitute a chargeable offense under the Policy. It is a description encompassing the six chargeable offenses listed below it.

- without the consent of the Complainant, including instances where the Complainant is incapable of giving consent
 - because of their age or
 - because of their temporary or permanent mental incapacity or physical incapacity.
 - e. Incest:
 - Nonforcible sexual intercourse between persons who are related to each other
 - within the degrees wherein marriage is prohibited by Massachusetts or New Hampshire law.
 - f. Statutory Rape:
 - Nonforcible sexual intercourse with a person
 - who is under the statutory age of consent of Massachusetts or New Hampshire.
- 2) Dating Violence:**
- Violence¹⁷ committed by a Respondent,
 - who is in or has been in a social relationship of a romantic or intimate nature with the Complainant; and
 - where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - length of the relationship
 - type of relationship
 - frequency of the interaction between the Parties involved in the relationship.
- 3) Domestic Violence:**
- Felony or misdemeanor crimes committed by a person who:
 - is a current or former spouse or intimate partner of the Complainant under the family or domestic violence laws of Massachusetts or New Hampshire or a person similarly situated to a spouse of the Complainant;
 - is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;
 - shares a child in common with the Complainant; or
 - commits acts against a youth or adult Complainant who is protected from those acts under the family or domestic violence laws of Massachusetts or New Hampshire.

¹⁷ For purposes of this Policy, violence is defined as intentionally or recklessly causing the Complainant physical, emotional, or psychological harm. Legitimate use of violence for self-defense is not chargeable under this Policy because the purpose is safety, not harm. Consensual use of violence, such as in kink relationships, would also not meet this definition, in most circumstances.

4) Stalking:

- engaging in a course of conduct¹⁸ on the basis of sex, that is,
- directed at a specific person that would cause a reasonable person¹⁹ to:
 - fear for the person’s safety, or
 - the safety of others; or
 - suffer substantial emotional distress.²⁰

¹⁸ For purposes of this definition, “A ‘course of conduct’ requires that there be more than one incident and the conduct must be directed at a specific person. Stalking can occur in person or using technology, and the duration, frequency, and intensity of the conduct should be considered. Stalking tactics can include, but are not limited to, watching, following, using tracking devices, monitoring online activity, unwanted contact, property invasion or damage, hacking accounts, threats, violence, sabotage, and attacks. (Federal Register, Vol 89, No. 83, 04/29/2024, p. 33523). Merely annoying conduct, even if repeated, is a nuisance, but is not typically chargeable as stalking.

¹⁹ Reasonable person is an objective standard meaning a person in the Complainant’s shoes (having similar characteristics/demographics to the Complainant).

²⁰ In the context of stalking, a Complainant is not required to obtain medical or other professional treatment, and counseling is not required to show substantial emotional distress.