

DISCRIMINATION, HARASSMENT, AND
SEXUAL MISCONDUCT POLICY FOR ALL
STUDENTS AND EMPLOYEES

MARIST

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Policy and Procedures: Procedure for Discrimination, Harassment, and Sexual Misconduct for All Students and Employees

Marist College affirms its commitment to promote the goals of fairness and equity in all aspects of the educational enterprise. All policies below are subject to resolution using the College's Equity Resolution Process, as detailed below. The Equity Resolution Process is applicable regardless of the status of the parties involved, who may be members or non-members of the campus community, students, student organizations, faculty, administrators and/or staff. The College reserves the right to act on incidents occurring on-campus, or off-campus, when the off-campus conduct could have an on-campus impact or impact the educational mission of the College.

Key staff members who oversee implementation of the College's Affirmative Action and Equal Opportunity plan, disability compliance, and the College's policy on Civil Rights Equity Grievance are:

Christina Daniele serves as the Title IX Coordinator

Deborah Raikes-Colbert serves as the Equity/AA Coordinator,

Eva Jackson, as the ADA/504 Coordinator

Reports of discrimination, harassment and/or retaliation should be made to the Title IX Coordinator, Christina Daniele or deputy/deputies promptly, but there is no time limitation on the filing of grievances¹, as long as the accused individual remains subject to the College's jurisdiction. All reports are acted upon promptly while every effort is made by the College to preserve the privacy of reports. Emergency access to the Title IX Coordinator or other appropriate, trained official is provided at all times, for intake of the first instance of a disclosure. All victims will be provided with a comprehensive brochure detailing options and resources, which the intake officer will also go over in person with the victim. Reports of discrimination by the Title IX Coordinator or designee should be reported to the College President.

This policy applies to behaviors that take place on the campus, at College-sponsored events, and to off-campus and actions online when the Title IX Coordinator or designee determines that the off-campus conduct affects a substantial College interest. A substantial College interest is defined to include:

- a) Any action that constitutes criminal offense as defined by federal or New York law. This includes, but is not limited to, single or repeat violations of any local, state or federal law committed in the municipality where the College is located;
- b) Any situation where it appears that the accused individual may present a danger or threat to the health or safety of self or others;
- c) Any situation that significantly infringes upon the rights, property or achievements of self or others or significantly breaches the peace and/or causes social disorder; and/or
- d) Any situation that is detrimental to the educational interests of the College.

Internal inquiries regarding the enclosed policies and procedures may be made to:

Christina Daniele

Title IX Coordinator
Office of Human Resources
Donnelly Hall 120
(845) 575-3799
titleix@marist.edu

Deborah DiCaprio

VP/Dean for Student Affairs
Deborah.DiCaprio@marist.edu
Rotunda 389
845-575-3515
deborah.dicaprio@marist.edu

External inquiries may be made to:

Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-1100
Customer Service Hotline #: (800) 421-3481
Fax: (202) 453-6012
TDD: (877) 521-2172
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

Local OCR office contact information:

Region II - New York (New Jersey, New York, Puerto Rico, Virgin Islands)
Linda Colon, Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services
Jacob Javits Federal Building
26 Federal Plaza - Suite 3312
New York, NY 10278
Phone (800) 368-1019
Fax: (212) 264-3039
TDD: (800) 537-7697

Equal Employment Opportunity Commission (EEOC)

Contact: <http://www.eeoc.gov/contact/>

1. College Policy on Nondiscrimination

Marist College adheres to all federal and state civil rights laws banning discrimination in private institutions of higher education. The College will not discriminate against any employee, applicant for employment, student or applicant for admission on the basis of race, religion, color, sex, pregnancy, religion, creed, ethnicity, national origin (including ancestry), citizenship status, physical or mental disability, age, sexual orientation, gender, gender identity, veteran or military status (including special disabled veteran, Vietnam-era veteran, or recently separated veteran), predisposing genetic characteristics, domestic violence victim status or any other protected category under applicable local, state or federal law, including protections for those opposing discrimination or participating in any grievance process on campus or within the Equal Employment Opportunity Commission or other human rights agencies.

This policy covers nondiscrimination in employment and in access to educational opportunities. Therefore, any member of the campus community, guest or visitor who acts to deny, deprive or limit the educational, employment, residential and/or social access, benefits and/or opportunities of any member of the campus community on the basis of their actual or perceived membership in the protected classes listed above is in violation of the College policy on nondiscrimination. When brought to the attention of the College, any such discrimination will be appropriately remedied by the College according to the procedures below.

2. College Policy on Accommodation of Disabilities

The College is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws pertaining to individuals with disabilities. Under the ADA and its amendments, a person has a disability if he or she has a physical or mental impairment that substantially limits a major life activity. The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the institution whether qualified or not. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, or caring for oneself.

The Director of Employee Relations or designee has been named as the ADA/504 Coordinator and is responsible for coordinating efforts to comply with these disability laws, including investigation of any grievance alleging noncompliance.

a. Students with Disabilities

The College is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs and activities of the College.

All accommodations are made on a case-by-case basis. A student requesting any accommodation should first contact the Director of Special Services, Jean Vizvary or designee who coordinates services for students with disabilities. The Director reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate to the student's particular needs and academic programs.

b. Employees with Disabilities

Pursuant to the ADA, the College will provide reasonable accommodation(s) to all qualified employees with known disabilities, where their disability affects the performance of their essential job functions, except where doing so would be unduly disruptive or would result in undue hardship.

An employee with a disability is responsible for requesting an accommodation in writing and providing documentation to the 504 Coordinator or designee. The 504 Coordinator or designee will work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties.

3. College Policy on Discriminatory Harassment

Students, staff, administrators, and faculty are entitled to a working environment and educational environment free of discriminatory harassment. The College's harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive subject matters protected by academic freedom. The sections below describe the specific forms of legally prohibited harassment that are also prohibited under College policy.

a. Discriminatory and Bias-Related Harassment

Harassment constitutes a form of discrimination that is prohibited by law. The College will remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a hostile environment. When harassment rises to the level of creating a hostile environment, the College may also impose sanctions on the harasser. The College harassment policy explicitly prohibits any form of harassment, defined as unwelcome conduct on the basis of actual or perceived membership in a protected class, by any member or group of the community.

A hostile environment may be created by oral, written, graphic, or physical conduct that is sufficiently severe or persistent/pervasive that it interferes with, limits or denies the ability of an individual to participate in or benefit from educational programs or activities or employment access, benefits or opportunities.ⁱⁱ

The College reserves the right to address offensive conduct and/or harassment that does not rise to the level of discrimination or that is of a generic nature not on the basis of a protected status,

and which customarily may not result in the imposition of discipline under College policy. This will be addressed through civil confrontation, remedial actions, education, and/or effective conflict resolution mechanisms. For assistance with conflict resolution techniques, employees should contact the Director of Human Resources and students should contact the Director of Student Conduct.

The College condemns and will not tolerate discriminatory harassment against any employee, student, visitor or guest on the basis of any status protected by College policy or law.

b. Sexual Harassment

Both the Equal Employment Opportunity Commission and the State of New York regard sexual harassment as a form of sex/gender discrimination and, therefore, as an unlawful discriminatory practice. The College has adopted the following definition of sexual harassment, in order to address the special environment of an academic community, which consists not only of employer and employees, but of students as well.ⁱⁱⁱ

Sexual harassment is unwelcome, sexual or gender-based verbal, written, online and/or physical conduct.^{iv}

Anyone experiencing sexual harassment in any College program is encouraged to report it immediately to the College's Title IX Coordinator or to any deputy coordinator.

Sexual harassment creates a hostile environment, and may be subject to discipline when it is severe or persistent/pervasive and it:

- has the effect of unreasonably interfering with, denying or limiting employment opportunities or the ability to participate in or benefit from the College's educational, social and/or residential program, and is
- based on power differentials (*quid pro quo*), the creation of a hostile environment or retaliation.

Policy Expectations with Respect to Consensual Relationships^v

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as faculty-student and supervisor-employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of this policy. The College does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the College. For the personal protection of members of this community, relationships in which

power differentials are inherent (faculty-student, staff-student, administrator-student) are prohibited.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisor, and will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities, or shift a party out of being supervised or evaluated by someone with whom they have established a consensual relationship. This includes RAs and students over whom they have direct responsibility. Failure to self-report such relationships to a supervisor as required can result in disciplinary action for an employee.

c. Sexual Misconduct

State law defines various violent and/or non-consensual sexual acts as crimes. Additionally, the College has defined categories of sexual misconduct, as stated below, for which action under this policy may be imposed. Generally speaking, the College considers Non-Consensual Sexual Intercourse violations to be the most serious, and therefore typically imposes the most severe sanctions, including suspension or expulsion for students and termination for employees. However, the College reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/ termination, for any act of sexual misconduct or other gender-based offenses, including intimate partner or relationship (dating and/or domestic) violence, non-consensual sexual contact and stalking based on the facts and circumstances of the particular grievance.

Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, gender, sexual orientation and/or gender identity of those involved. Violations include:

i. Sexual Harassment (as defined in section b above)

Non-Consensual Sexual Intercourse is defined as:

- any sexual penetration or intercourse (anal, oral or vaginal)
- however slight
- with any object
- by a person upon another person
- that is without affirmative consent and/or by force

Sexual penetration includes vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation by mouth to genital contact or genital to mouth contact.

Non-Consensual Sexual Contact^{vi} is defined as:

- any intentional sexual touching
- however slight

- with any object
- by a person upon another person
- that is without affirmative consent and/or by force

Sexual touching includes any bodily contact with the breasts, groin, genitals, mouth or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

ii. Sexual Exploitation

Sexual Exploitation refers to a situation in which a person takes non-consensual or abusive sexual advantage of another, and situations in which the conduct does not fall within the definitions of Sexual Harassment, Non-Consensual Sexual Intercourse or Non-Consensual Sexual Contact. Examples of sexual exploitation include, but are not limited to:

- Sexual voyeurism (such as watching a person undressing, using the bathroom or engaged in sexual acts without the consent of the person observed)
- Taking pictures or video or audio recording another in a sexual act, or in any other private 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)
- Prostitution
- Sexual exploitation also includes engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted infection (STI) and without informing the other person of the infection, and further includes administering alcohol or drugs (such as "date rape" drugs) to another person without his or her knowledge or consent

iii. Affirmative Consent^{vii}

Affirmative consent is knowing, voluntary and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based on a participant's sex, sexual orientation, gender identity or gender expression. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity.

A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this policy.

It is not an excuse that the individual responding party of sexual misconduct was intoxicated and, therefore, did not realize the incapacity of the other. Incapacitation is defined as a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction). This policy also covers a person whose incapacity results from mental disability, involuntary physical restraint and/or from the taking of incapacitating drugs.

Consent to some sexual contact or prior sexual activity (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous dating relationship is not sufficient to constitute consent. The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred, and any similar previous patterns that may be evidenced. A person can withdraw consent at any time during sexual activity by expressing in words or actions that he or she no longer wants the act to continue, and, if that happens, the other person must stop immediately.

In New York State, a minor (meaning a person under the age of 17 years) cannot consent to sexual activity. This means that sexual contact by an adult with a person younger than 17 years old is a crime, as well as a violation of this policy, even if the minor wanted to engage in the act.

4. Other Civil Rights Offenses, When the Act is Based upon the Status of a Protected Class^{viii}

- Threatening or causing physical harm, extreme verbal abuse or other conduct which threatens or endangers the health or safety of any person on the basis of their actual or perceived membership in a protected class
- Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of their actual or perceived membership in a protected class
- Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another on the basis of actual or perceived membership in a protected class
- Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the College community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the hazing policy) on the basis of actual or perceived membership in a protected class; hazing is also illegal under New York law and prohibited by College policy
- Bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally on the basis of actual or perceived membership in a protected class
- Violence between those in an intimate relationship to each other on the basis of actual or perceived membership in a protected class (this includes romantic relationships, dating, domestic^{ix} and/or relationship violence)^x

- Stalking^{xi}, defined as a course of conduct directed at a specific person on the basis of actual or perceived membership in a protected class that is unwelcome and would cause a reasonable person to feel fear^{xiii}
- Any other College rules, when a violation is motivated by the actual or perceived membership of the victim in a protected class may be pursued using this policy and process.

Sanctions for the above-listed “Other Civil Rights Behaviors” behaviors range from reprimand up through and including expulsion (students) or termination of employment.

5. Retaliation

Retaliation is defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity. Retaliation against an individual for alleging harassment, supporting a reporting party or for assisting in providing information relevant to a claim of harassment is a serious violation of College policy and will be treated as another possible instance of harassment or discrimination. Acts of alleged retaliation should be reported immediately to the Title IX Coordinator or designee and will be promptly investigated. The College is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

6. Interim Measures

The College will implement initial interim and responsive and/or protective actions upon notice of alleged harassment, retaliation and/or discrimination. Such measures could include but are not limited to: no contact orders, providing counseling and/or medical services, transportation assistance, academic support, living arrangement adjustments, providing a campus escort, academic or work schedule and assignment modifications, safety planning, referral to campus and community support resources.

The College will take additional prompt interim and/or disciplinary action with respect to any member of the community, guest or visitor who has been found to engage in harassing or discriminatory behavior or retaliation. Procedures for handling reported incidents are fully described below. Deliberately false and/or malicious accusations of harassment, as opposed to grievances which, even if erroneous, are made in good faith, are just as serious an offense as harassment and will be subject to appropriate disciplinary action.

7. Amnesty

The health and safety of every student at the College is of utmost importance. Marist College recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The College strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to

institutional officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to College officials or law enforcement will not be subject to the College's code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

8. Confidentiality and Reporting of Offenses Under This Policy

The College is committed to the highest ethical and professional standards of conduct and to the safety and well-being of all members of our community. To achieve this goal, the college expects and relies on each member of the community to report actual or suspected violations of federal or state laws, violations of College policy or procedures, or other suspected wrongdoings. This includes reports from students, third-parties, and/or anonymous sources. The following describes the reporting options at the College.

a. Confidential Reporting

If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with members of the Counseling Center, Health Services, or Father Richard LaMorte, Catholic priest and Campus Minister, off-campus local rape crisis counselors, domestic violence resources, and local or state assistance agencies, who will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor. For off-campus support and resources please visit www.marist.edu/titleix/resources. These employees will submit anonymous statistical information for Title IX tracking and Clery Act purposes unless they believe it would be harmful to their client, patient or parishioner. Campus counselors are available for students and the Employee Assistance Program is available for employees free of charge and can be seen on an emergency basis during normal business hours.

b. Formal Reporting Options

College employees have a duty to report, unless they fall under the section above. Parties making a report may want to consider carefully whether they share personally identifiable details with non-confidential employees, as those details must be shared by the employee with the Title IX Coordinator and/Deputy Coordinators or designee. Otherwise, employees must share all details of the reports they receive. If a reporting party does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the reporting party may make such a request to the Title IX Coordinator/Deputy Coordinators or designee, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. Even Marist College offices and employees who cannot guarantee confidentiality will maintain privacy to the greatest extent possible. The information provided to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.

In cases indicating pattern, predation, threat and/or violence, the College will be unable to honor

a request for confidentiality. In cases where the victim requests confidentiality and the circumstances allow the College to honor that request, the College will offer interim supports and remedies to the victim and the community, but will not otherwise pursue formal action. A reporting party has the right, and can expect, to have reports taken seriously by the College when formally reported, and to have those incidents investigated and properly resolved through these procedures. Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be informed. Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party's rights and privacy.

Any disclosure made in the course of institutional research, classroom discussions or writing assignments or events such as Take Back the Night or speakouts is not considered notice to the College unless the victim wishes a report to be made. Such information will be used to inform campus climate and educational efforts, generally.

9. Federal Timely Warning Obligations

Victims of sexual misconduct should be aware that College administrators must issue timely warnings for incidents reported to them that pose a substantial threat of bodily harm or danger to members of the campus community. The College will make every effort to ensure that a victim'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. Any information about the resolution will not be released by the College until the conclusion of the resolution process, as permitted by law.

Process for Resolving Reports of Harassment, Sexual Misconduct, and Other Forms of Discrimination

The College will act on any formal or informal grievance or notice of violation of the policy on Discrimination, Harassment, and Sexual Misconduct, that is received by the Title IX Coordinator or designee, or other College employee.

The procedures described below will apply to all grievances involving students, staff or faculty members with the exception that unionized or other categorized employees will be subject to the terms of their respective collective bargaining agreements/employees' rights to the extent those agreements do not conflict with federal or state compliance obligations. Grievances brought to the colleges' attention involving non-members of the community are also covered by these procedures.

1. Equity Resolution Panel (ERP)

The Equity Resolution Panel, made up of trained faculty, staff, and/or administrators is charged with hearing cases brought before them that violate the Colleges discrimination policies including Title IX violations. Most panels will consist of three (3) individuals. Members of the ERP are trained in all aspects of the grievance (hearing) process, and can serve in any of the

following roles, and the direction of the Title IX Coordinator or designee:

- To provide sensitive intake and initial counseling to reporting parties
- To serve in a mediation role in conflict resolution
- To investigate reports of discrimination
- To act as advocates to those involved in the process
- To serve on hearing panels
- To serve on appeal panels

ERP members also recommend proactive policies, and serve in an educative role for the community. The President, in consultation with the Associate Vice President for Human Resources or designee, appoints the panel, which reports to the Title IX Coordinator. ERP members receive annual training organized by the Title IX Coordinator or designee, including a review of College policies and procedures, so that they are able to provide accurate information to members of the community. All ERP members are required to attend this annual training.

2. Reporting Misconduct

Any member of the community, guest or visitor who believes that the policy on Discrimination, Harassment, and Sexual Misconduct has been violated should contact the Title IX Coordinator or designee. It is also possible for employees to notify a supervisor, or for students to notify the Office of Student Conduct, Housing and Residence Life staff, the Vice President for Student Affairs, the Assistant Dean of Student Affairs, or other trusted advisors. Any member of the community, including visitors, may also contact Safety and Security. These individuals will in turn notify the Title IX Coordinator.

All employees receiving reports of a potential violation of College policy are expected to promptly contact the Title IX Coordinator or designee, the Office of Safety and Security, or the Office of Student Conduct within 24 hours of becoming aware of a report or incident. All initial contacts will be treated with the maximum possible privacy: specific information on any grievances received by any party will be reported to the Title IX Coordinator or designee, but, subject to the College's obligation to address violations, every effort will be made to maintain the privacy of those initiating a report of a grievance. In all cases, the College will give consideration to the reporting party with respect to how the reported misconduct is pursued, but reserves the right, when necessary to protect the community, to investigate and pursue a resolution when an alleged victim chooses not to initiate or participate in a formal grievance.

3. Intake for Reported Misconduct

Following receipt of notice or a report of misconduct, the Title IX Coordinator or designee^{xiii} will conduct an initial Title IX assessment. The goal of this assessment is to provide an integrated and coordinated response to these reports. The assessment will consider the nature of the report, the safety of the individual, the campus community, and the reporting parties' preference for resolution. In addition, the Title IX Coordinator or designee will notify the reporting party of

their right to use an advisor of their choice (including attorneys) who can provide support during the grievance process. The reporting party may choose an advisor/advocate, if preferred, or proceed without an advisor/advocate. Normally, within two business days, an initial determination is made whether a policy violation may have occurred and/or whether conflict resolution might be appropriate. If the reported misconduct does not appear to violate a policy violation or if conflict resolution is desired by the reporting party, and appears appropriate given the nature of the alleged behavior, then the report does not proceed to investigation, unless a pattern of misconduct is suspected.

A full investigation will necessarily be pursued if there is evidence of a pattern of misconduct or a perceived threat of further harm to the community or any of its members. The College aims to complete all investigations within a 60 calendar day time period, which can be extended as necessary for appropriate cause by the Title IX Coordinator or designee with notice to the parties.

4. Investigation

If the Title IX assessment concludes that College disciplinary action may be appropriate, and the reporting party wishes to pursue a formal resolution the College will initiate an investigation. The Title IX Coordinator or designee will appoint a member(s) of the ERP to conduct the investigation, usually within two business days of determining that a resolution should proceed. The investigators will conduct the investigation in a manner appropriate to the circumstances of the case, and typically will include interviews with the reporting and responding parties to present statements, witnesses, and other evidence. The interviews will be supplemented by the gathering of any physical, documentary, or other evidence with appropriate sensitivity and respect. The investigation will be conducted in a manner that is respectful of the individual privacy concerns.

At the conclusion of the investigation, the investigator(s) will prepare a report setting forth the facts gathered which will be forwarded to the Title IX Coordinator and the College Administrator responsible for initiating disciplinary resolution proceedings.

5. Interim Remedies

If, in the judgment of the Title IX Coordinator or designee, the safety or well-being of any member(s) of the campus community may be jeopardized by the presence on-campus of the accused individual or the ongoing activity of a student organization whose behavior is in question, the Title IX Coordinator or designee may provide interim remedies intended to address the short-term effects of harassment, discrimination and/or retaliation, i.e., to redress harm to the alleged victim and the community and to prevent further violations. These remedies may include referral to counseling and health services or to the Employee Assistance Program, education to the community, altering the housing situation of an accused student or resident employee (or the alleged victim, if desired), altering work arrangements for employees, providing campus escorts, implementing contact limitations between the parties, offering adjustments to academic deadlines, course schedules, etc.

The College may interim suspend a student, employee or organization pending the completion of ERP investigation and procedures. The appropriate administrative officer or Title IX Coordinator/designee has sole discretion to implement an interim suspension under the policy on Discrimination, Harassment and Sexual Misconduct, and to determine its conditions and duration. Violation of an interim suspension under this policy will be grounds for dismissal or termination.

During an interim suspension or administrative leave, a student or employee may be denied access to College housing and/or the College campus/facilities/events. As determined by the appropriate administrative officer or Title IX Coordinator/designee this restriction can include classes and/or all other College activities or privileges for which the student or employee might otherwise be eligible. At the discretion of the appropriate administrative officer or Title IX Coordinator/designee alternative coursework options may be pursued to ensure as minimal an impact as possible on the accused student or employee.

Both the accused or respondent and the reporting individual will, upon request be afforded a prompt review of the need for and terms of an interim suspension, including potential modification, and will be allowed to submit evidence in support of his or her request.

6. Resolution of Reported Misconduct

During or upon the completion of investigation, the investigators will meet with the Title IX Coordinator or designee. Based on that meeting, the Title IX Coordinator or designee will make a decision on whether there is reasonable cause to proceed with the resolution. If the Title IX Coordinator or designee decides that no policy violation has occurred or that the preponderance of evidence (i.e., whether it is more likely than not that the accused individual committed each alleged violation) does not support a finding of a policy violation, then the process will end unless the reporting party requests that the Title IX Coordinator or designee makes an extraordinary determination to re-open the investigation or to forward the matter for a hearing. This decision lies in the sole discretion of the Title IX Coordinator or designee. If there is reasonable cause, the Title IX Coordinator or designee will direct the investigation to continue, or if there is a preponderance of evidence of a violation, then the Title IX Coordinator or designee may recommend conflict resolution, a resolution without a hearing or a formal hearing, based on the below criteria.

a. Conflict Resolution

The Title IX Coordinator or designee will determine if conflict resolution is appropriate, based on the willingness of the parties, the nature of the conduct. Conflict resolution is often used for less serious, yet inappropriate, behaviors and is encouraged as an alternative to the formal hearing process to resolve conflicts. In a conflict resolution meeting, an ERP member will facilitate a dialogue with the parties to an effective resolution, if possible. Sanctions are not

possible as the result of a conflict resolution process, though the parties may agree to appropriate remedies. The Title IX Coordinator or designee will keep records of any resolution that is reached, and failure to abide by the accord can result in appropriate responsive actions.

Conflict resolution will not be the primary resolution mechanism used to address reports of sexual misconduct or violent behavior of any kind or in other cases of serious violations of policy, though it may be made available after the formal process is completed should the parties and the Title IX Coordinator or designee believe that it could be beneficial. It is not necessary to pursue conflict resolution first in order to make a formal ERP report, and anyone participating in conflict resolution can stop that process at any time and request a formal hearing.

b. Resolution Without a Hearing

Resolution without a hearing can be pursued for any behavior that falls within the policy on Discrimination, Harassment, and Sexual Misconduct, at any time during the process. The Title IX Coordinator or designee will provide written notification of reported misconduct to any member of the College community who is accused of an offense of harassment, discrimination, or retaliation. The Title IX Coordinator or designee together with the investigator(s) will meet with the responding individual to explain the finding(s) of the investigation. Once informed, the responding party may choose to admit responsibility for the alleged policy violations at any point in the process. If so, the Title IX Coordinator or designee will render a finding that the individual is in violation of College policy for the admitted conduct. For admitted violations, the Chair of the ERP will recommend an appropriate sanction or responsive action. If the sanction/responsive action is accepted by both the reporting party and responding party, the Title IX Coordinator or designee will implement it, and act promptly and effectively to remedy the effects of the admitted conduct upon the victim and the community. If either party rejects the sanction/responsive action, an ERP formal hearing will be held, according to the ERP procedures below, except in the case of at-will employees for whom findings and responsive actions will be determined by the Associate Vice President for Human Resources in collaboration with the Title IX Coordinator or designee, based on the results of the investigation. If reported misconduct is resolved at this stage, the Title IX Coordinator or designee will inform the accused individual and the reporting party of the final determination within 10 business days of the resolution, without significant time delay between notifications. Notification will be made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official College records; or emailed to the parties' College-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

c. Formal Hearing

For any grievances that are not appropriate for conflict resolution and which are not resolved without a hearing, the Title IX Coordinator or designee will initiate a formal hearing or for employees for whom no hearing process is available, will refer his/her findings to the Associate

Vice President for Human Resources or designee for implementation.

7. Formal ERP Procedure

a. Hearing Panels

The Title IX Coordinator or designee will appoint a non-voting panel Chair, depending on whether the responding party is a faculty member, other employee, or student and three members of the ERP to the hearing panel, none of whom have been previously involved with the investigation. ERP members who served as investigators will be witnesses in the hearing of the grievance and therefore may not serve as hearing panel members. Hearing panels may include both faculty and non-faculty employees, with a least one faculty employee selected in a grievance involving a faculty member. No member of the panel may be a practicing attorney, though the institution reserves the right to have its attorney present during the hearing. The panel will meet at times determined by the Title IX Coordinator or designee.

b. Notification of Charges

At least one week prior to the hearing, or as far in advance as is reasonably possible if an accelerated hearing is scheduled with the consent of the parties, the Title IX Coordinator or designee will send a letter to the parties with the following information. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. The letter will contain:

- A description of the alleged violation(s), a description of the applicable procedures and a statement of the potential sanctions/responsive actions that could result.
- The time, date and location of the hearing and a reminder that attendance is mandatory. If any party does not appear at the scheduled hearing, the hearing will be held in their absence. For compelling reasons, the Title IX Coordinator or designee may reschedule the hearing.
- The parties may have the assistance of an advisor/advocate at the hearing. Typically, advocates are members of the campus community, but the parties may select whomever they wish to serve as their advocate including attorneys. Note that the advocate may not make a presentation or represent the reporting party or responding party during the hearing. The parties to the hearing are expected to ask and respond to questions on their own behalf, without representation by their advisor/advocate. The advisor/advocate may consult with the advisee quietly or in writing, or outside the hearing during breaks, but may not speak on behalf of the advisee to the panel.
- Hearings for possible violations that occur near or after the end of an academic term will be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the College and remain within the 60-day goal for resolution.

c. Hearing Procedures

ERP Hearings will be convened, usually within one to two weeks of the completion of the investigation, and will be conducted in private. The ERP has the authority to hear all collateral misconduct, meaning that it hears all allegations of discrimination, harassment and retaliation, but also may hear any additional alleged policy violations that have occurred along with the discrimination, harassment or retaliation, or sexual misconduct even though those collateral allegations may not specifically fall within ERP jurisdiction. Accordingly, investigations should be conducted with as wide a scope as necessary.

Participants will include the non-voting Chair, the three members of the panel, the investigator(s) who conducted the investigation on the grievance, the reporting party and responding party(ies) (or three organizational representatives in a case where an organization is charged), advisors/advocates to the parties and any called witnesses. All institutional officials will be impartial and free of conflicts of interest throughout the resolution process. The Chair will exchange the names of witnesses the College intends to call, all pertinent documentary evidence and any written findings from the investigators between the parties at least two business days prior to the hearing. In addition, the parties will be given a list of the names of each of the ERP panel members at least two business days in advance of the hearing. Should either party object to any panelist, he/she must raise all objections, in writing, to the Title IX Coordinator or designee immediately. Panel members will only be unseated if the Chair concludes that their bias precludes an impartial hearing of the grievance. Additionally, any panelist or Chair who feels he/she cannot make an objective determination must recuse himself or herself from the proceedings when notified of the identity of the parties and all witnesses in advance of the hearing.

All parties will have ample opportunity to present facts and arguments in full and question all present witnesses during the hearing, though formal cross-examination is not used between the parties. If alternative questioning mechanisms are desired (screens, Skype, questions directed through the Chair, etc.), the parties should request them from the Title IX Coordinator or designee at least two business days prior to the hearing.

Once the procedures are explained and the participants are introduced, the investigator will present the report of the investigation first, and be subject to questioning by the parties and the ERP. The investigator(s) will be present during the entire hearing process, but will only be present during deliberations at the request of the Chair. The findings of the investigation are not binding on the panel, though any undisputed conclusions of the investigation report will not be revisited, except as necessary to determine sanctions/responsive actions. Once the investigator(s) is/are questioned, the ERP will permit questioning of and by the parties, and of any present witness. Questions may be directed through the panel at the discretion of the Chair.

Formal rules of evidence will not apply. Any evidence that the panel believes is relevant and credible may be considered, including history and pattern evidence. The Chair will address any evidentiary concerns prior to and/or during the hearing, may exclude irrelevant or immaterial evidence and may ask the panel to disregard evidence lacking in credibility. The Chair will

determine all questions of procedure and evidence. Anyone appearing at the hearing to provide information will respond to questions on his/her own behalf.

Unless the Chair determines it is appropriate, no one will present information or raise questions concerning: (1) incidents not directly related to the possible violation, unless they show a pattern, or (2) the sexual history of or the character of the victim/reporting party.

There will be no observers in the hearing. The Chair may allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the panel or the parties involved. The panel does not hear from character witnesses, but will accept up to two letters supporting the character of the individuals involved.

In hearings involving more than one accused individual or in which two reporting parties have accused the same individual of substantially similar conduct, the standard procedure will be to hear the grievances jointly; however, the Title IX Coordinator or designee may permit the hearing pertinent to each responding party to be conducted separately. In joint hearings, separate determinations of responsibility will be made for each responding party.

Proceedings are private. All persons present at any time during the hearing are expected to maintain the privacy of the proceedings, subject to College consequences for failure to do so. While the contents of the hearing are private, the parties have discretion to share their own experiences if they so choose, and should discuss doing so with their advocates.

Hearings are recorded for purposes of review in the event of an appeal. ERP members, the parties and/or the persons who initiated the action, and appropriate administrative officers of the College will be allowed to listen to the recording in a location determined by the Title IX Coordinator or designee. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator or designee. Hearings are recorded for purposes of review in the event of an appeal. The parties and/or the persons who initiated the action, and appropriate administrative officers of the College will be allowed to listen to the recording in a location determined by the Title IX Coordinator or designee. The parties and/or the persons who initiated the action confirm that they will protect the privacy of the information contained in the recording.

d. Decisions

The ERP will deliberate in closed session to determine whether the responding party is responsible or not responsible for the violation(s) in question. The panel will base its determination on a preponderance of the evidence (i.e., whether it is more likely than not that the accused individual committed each alleged violation). If an individual responding party or organization is found responsible by a majority of the panel, the panel will recommend appropriate sanctions to the Title IX Coordinator or designee.

The Chair will prepare a written deliberation report and deliver it to the Title IX Coordinator or designee, detailing the finding, how each member voted, the information cited by the panel in support of its recommendation and any information the hearing panel excluded from its consideration and why. The report should conclude with any recommended sanctions. This report should not exceed two pages in length and must be submitted to the Title IX Coordinator or designee within five (5) business days of the end of deliberations.

The Title IX Coordinator or designee will inform the accused individual and the reporting party of the final determination within 10 business days of the hearing, without significant time delay between notifications. Notification will be made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official College records; or emailed to the parties' College-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

e. Sanctions

Sanctions or responsive actions will be recommended by the ERP. Factors considered when determining a sanction/responsive action may include:

- The nature, severity of, and circumstances surrounding the violation
- An individual's disciplinary history
- Previous grievances or allegations involving similar conduct
- Any other information deemed relevant by the ERP
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment and/or retaliation
- The need to remedy the effects of the discrimination, harassment and/or retaliation on the victim and the community

i. Student Sanctions

A complete list of student sanctions that may be imposed upon students or organizations singly or in combination can be found in Appendix 1. At any point in the process at which sanctions are to be imposed, the reporting party will have the right to submit a written impact statement to be considered before sanctions are determined.

Transcript Notation

For crimes of violence, including, but not limited to sexual violence, Marist College will make a notation on the transcript of students found responsible after a conduct process that they were "suspended after a finding of responsibility for a code of conduct violation" or "expelled after a finding of responsibility for a code of conduct violation." For any respondent who withdraws from the institution while such conduct charges are pending, and declines to

complete the disciplinary process, Marist College will make a notation on the transcript that they "withdrew with conduct charges pending." Marist College permits a student seeking removal of a transcript notation for a suspension to petition the Title IX Coordinator in writing for such removal, provided that such notation will not be removed prior to one year after conclusion of the suspension. Notations for expulsion will not be removed. If a finding of responsibility is vacated for any reason, any such transcript notation will be removed.

ii. Employee Sanctions

Responsive actions for an employee who has engaged in sexual misconduct, harassment, discrimination and/or retaliation include warning, required counseling, demotion, suspension with pay, suspension without pay and termination.

f. Withdrawal or Resignation While Charges Pending

Students: Should a student decide to leave and not participate in the investigation and/or hearing, the process will nonetheless proceed in the student's absence to a reasonable resolution and that student will not be permitted to return to College unless all sanctions have been satisfied.

Employees: Should an employee resign while charges are pending, the records of the Title IX Coordinator or designee will reflect that status, as will College responses to any future inquiries regarding employment references for that individual. The Title IX Coordinator or designee will act to promptly and effectively remedy the effects of the conduct upon the victim and the community. If an employee is dismissed due to a Title IX violation the college will advise future employment references.

g. Appeals

All requests for appeal considerations must be submitted in writing to the Title IX Coordinator or designee within (5) five business days of the delivery of the written finding of the ERP.

A three-member panel of the ERP designated by the Title IX Coordinator or designee who was not involved in the grievance previously will consider all appeal requests. Any party may appeal, but appeals are limited to the following:

- A procedural error or omission occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.).
- To consider new evidence, unknown or unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.
- The sanctions imposed are substantially disproportionate to the severity of the violation.

The appeals panel of the ERP will review the appeal request(s). The original finding and sanction/responsive actions will stand if the appeal is not timely or is not based on the grounds listed above, and such a decision is final. When any party requests an appeal, the other party (parties) will be notified and joined in the appeal. The party requesting appeal must show that the grounds for an appeal request have been met, and the other party or parties may show the grounds have not been met, or that additional grounds are met. The original finding and sanction are presumed to have been decided reasonably and appropriately.

Where the ERP appeals panel finds that at least one of the grounds is met, and proceeds, additional principles governing the hearing of appeals include the following:

- Appeals decisions by the ERP panel are to be deferential to the original decision, making changes to the finding only where there is clear error and to the sanction/responsive action only if there is a compelling justification to do so.
- Appeals are not intended to be full rehearings of the grievance. In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal. Appeals granted based on new evidence should normally be remanded to the original hearing panel unless otherwise directed by the Title IX Coordinator or designee.
- Sanctions imposed are implemented immediately unless the Title IX Coordinator or designee determines their implementation in extraordinary circumstances, pending the outcome of the appeal.
- The Title IX Coordinator or designee will normally, after conferring with the ERP appeals panel, render a written decision on the appeal to all parties within 10 business days from hearing of the appeal.
- All parties should be informed of whether the grounds for an appeal are accepted and the results of the appeal decision.
- Once an appeal is decided, the outcome is final: further appeals are not permitted.

h. Failure to Complete Sanctions/Comply with Responsive Actions

All responding parties are expected to comply with conduct sanctions/responsive/corrective actions within the time frame specified by the Title IX Coordinator or designee. Failure to follow through on conduct sanctions/responsive/corrective actions by the date specified, whether by refusal, neglect or any other reason, may result in additional sanctions/responsive/corrective actions and/or suspension, expulsion and/or termination from the College. A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator or designee.

i. Records

In implementing this policy, records of all grievances, resolutions, and hearings will be kept by the Office of Student Conduct and/or Title IX Coordinator or designee. All suspensions and

dismissals are kept indefinitely in paper form and in a database.

j. Statement of the Rights of a Reporting Party - Survivor Bill of Rights

- To take advantage of campus support resources (such as Counseling Services, Health Services for students, and Fr. Richard LaMorte (Catholic Priest, Campus Ministries) or EAP services for employees).
- To experience a safe living, educational and work environment.
- To refuse to have an allegation resolved through conflict resolution procedures.
- To receive amnesty for minor student misconduct (such as alcohol or drug violations) that is ancillary to the incident.
- To have grievances heard in substantial accordance with these procedures.
- Where the injured party is not the complainant, the injured party has full rights to participation in any ERP process.
- To be informed in writing of the outcome/resolution of the grievance, sanctions where permissible and the rationale for the outcome where permissible.
- Refer to law enforcement and have assistance.
- Housing and living accommodations.
- Academic accommodations.
- No contacts.
- Make a report to local law enforcement and/or state police;
- Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
- Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the institution;
- Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
- Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
- Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
- Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
- Be protected from retaliation by the institution, any student, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
- Access to at least one level of appeal of a determination;

- Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the Judicial or conduct process including during all meetings and hearings related to such process; and
- Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution;
- Receive assistance from appropriate institutional representatives in initiating legal proceedings in family court or civil court, including obtaining an order or protection or equivalent protective or restraining order and in enforcing these orders on campus;
- Withdraw a complaint or involvement from the institutional process at any time.
- To receive a copy of the order of protection or equivalent when received by an institution and have an opportunity to meet or speak with an institutional representative, or other appropriate individual, who can explain the order and answer questions about it, including information from the order about the accused's responsibility to stay away from the protected person or persons and an explanation of the consequences for violating these orders;

k. Statement of the Rights of the Responding Party

- To be treated with respect by College officials.
- To take advantage of campus support resources (such as Counseling Services, Health Services for students, and Fr. Richard LaMorte (Catholic Priest, Campus Ministries) or EAP services for employees).
- To have an advisor/advocate of their choice during this process.
- To refuse to have an allegation resolved through conflict resolution procedures.
- To have grievances heard in substantial accordance with these procedures.
- To be informed of the outcome/resolution of the grievance and the rationale for the outcome, in writing.

8. Revision

These policies and procedures will be reviewed and edited by the Title IX Policy Committee. The Title IX Coordinator or designee may make minor modifications to procedure that do not materially jeopardize the fairness owed to any party. However, the Title IX Coordinator or designee may also vary procedures materially with notice (on the institutional web site) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure. Procedures in effect at the time of its implementation will apply. Policy in effect at the time of the offense will apply even if the policy is changed subsequently, unless the parties consent to be bound by the current policy.

This policy and procedure was implemented in July 2015.

Endnotes

ⁱ Alternatively, the terminology of “complaint” may be used in lieu of grievance.

ⁱⁱ This definition of hostile environment is based on Federal Register / Vol. 59, No. 47 / Thursday, March 10, 1994: Department Of Education Office For Civil Rights, Racial Incidents And Harassment Against Students At Educational Institutions Investigative Guidance. The document is available at <http://www.ed.gov/about/offices/list/ocr/docs/race394.html>.

ⁱⁱⁱ Also of relevance is the Office of Civil Rights 2001 statement on sexual harassment, “Revised Sexual Harassment Guidance: Harassment Of Students By School Employees, Other Students, Or Third Parties, Title IX,” which can be found at <http://www2.ed.gov/legislation/FedRegister/other/2001-1/011901b.html>, as well as the April, 2011 Dear Colleague Letter on Campus Sexual Violence, which can be found at: http://www.whitehouse.gov/sites/default/files/dear_colleague_sexual_violence.pdf

^{iv} Some examples of possible Sexual Harassment include:

- A professor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student accedes to the request.
- A student repeatedly sends sexually oriented jokes around on an email list s/he created, even when asked to stop, causing one recipient to avoid the sender on campus and in the residence hall in which they both live.
- Explicit sexual pictures are displayed in a professor’s office or on the exterior of a residence hall door
- Two supervisors frequently ‘rate’ several employees’ bodies and sex appeal, commenting suggestively about their clothing and appearance.
- A professor engages students in her class in discussions about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. She probes for explicit details, and demands that students answer her, though they are clearly uncomfortable and hesitant.
- An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend, turning him into a social pariah on campus
- Male students take to calling a particular brunette student “Monica” because of her resemblance to Monica Lewinsky. Soon, everyone adopts this nickname for her, and she is the target of relentless remarks about cigars, the president, “sexual relations” and Weight Watchers.
- A student grabbed another student by the hair, then grabbed her breast and put his mouth on it. While this is sexual harassment, it is also a form of sexual violence.

^v This section is offered as an optional inclusion, as some campuses prefer to include this policy elsewhere, such as a faculty handbook or employee manual. We include it here to inform students, not just employees, of our expectations.

^{vi} The state definition of sexual assault is below, which is applicable to criminal prosecutions for sexual assault in New York but may differ from the definition used on campus to address policy violations.

§130.20 Sexual misconduct.

A person is guilty of sexual misconduct when:

1. He or she engages in sexual intercourse with another person without such person’s consent; or
2. He or she engages in oral sexual conduct or anal sexual conduct with another person without such person’s consent; or (Eff.11/1/03,Ch.264,L.2003)
3. He or she engages in sexual conduct with an animal or a dead human body.

Sexual misconduct is a class A misdemeanor.

§130.25 Rape in the third degree.

A person is guilty of rape in the third degree when:

1. He or she engages in sexual intercourse with another person who is incapable of consent by reason of some factor

other than being less than seventeen years old;

2. Being twenty-one years old or more, he or she engages in sexual intercourse with another person less than seventeen years old; or
3. He or she engages in sexual intercourse with another person without such person's consent where such lack of consent is by reason of some factor other than incapacity to consent. Rape in the third degree is a class E felony.

§130.30 Rape in the second degree.

A person is guilty of rape in the second degree when:

1. being eighteen years old or more, he or she engages in sexual intercourse with another person less than fifteen years old; or
2. he or she engages in sexual intercourse with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated.

It will be an affirmative defense to the crime of rape in the second degree as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the act. Rape in the second degree is a class D felony.

§130.35 Rape in the first degree.

A person is guilty of rape in the first degree when he or she engages in sexual intercourse with another person:

1. By forcible compulsion; or
2. Who is incapable of consent by reason of being physically helpless; or
3. Who is less than eleven years old; or
4. Who is less than thirteen years old and the actor is eighteen years old or more.

Rape in the first degree is a class B felony.

§130.40 Criminal sexual act in the third degree.

A person is guilty of criminal sexual act in the third degree when:

1. He or she engages in oral sexual conduct or anal sexual conduct with a person who is incapable of consent by reason of some factor other than being less than seventeen years old.
2. Being twenty-one years old or more, he or she engages in oral sexual conduct or anal sexual conduct with a person less than seventeen years old; or
3. He or she engages in oral sexual conduct or anal sexual conduct with another person without such person's consent where such lack of consent is by reason of some factor other than incapacity to consent.
(Eff.11/1/03,Ch.264,L.2003)

Criminal sexual act in the third degree is a class E felony.

§130.45 Criminal sexual act in the second degree.

A person is guilty of criminal sexual act in the second degree when:

1. being eighteen years old or more, he or she engages in oral sexual conduct or anal sexual conduct with another person less than fifteen years old; or
2. he or she engages in oral sexual conduct or anal sexual conduct with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated.

It will be an affirmative defense to the crime of criminal sexual act in the second degree as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the act.
(Eff.11/1/03,Ch.264,L.2003) Criminal sexual act in the second degree is a class D felony.

§130.50 Criminal sexual act in the first degree.

A person is guilty of criminal sexual act in the first degree when he or she engages in oral sexual conduct or anal sexual conduct with another person: (Eff.11/1/03,Ch.264,L.2003)

1. By forcible compulsion; or
2. Who is incapable of consent by means of being physically helpless; or
3. Who is less than eleven years old; or
4. Who is less than thirteen years old and the actor is eighteen years old or more.

Criminal sexual act in the first degree is a class B felony.(Eff.11/1/03,Ch.264,L.2003)

§130.52 Forcible touching.

A person is guilty of forcible touching when such person intentionally, and for no legitimate purpose, forcibly touches the sexual or other intimate parts of another person for the purpose of degrading or abusing such person; or for the purpose of gratifying the actor's sexual desire. For the purposes of this section, forcible touching includes squeezing, grabbing or pinching. Forcible touching is a class A misdemeanor.(Eff.11/1/03,Ch.264,L.2003)

^{vii} The state definition of consent is below, which is applicable to criminal prosecutions for sex offenses in New York, but may differ from the definition used on campus to address policy violations.

§130.05 Sex offenses; lack of consent.

Lack of consent results from: (a) Forcible compulsion; or (b) Incapacity to consent; or (c) Where the offense charged is sexual abuse of forcible touching, any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor's conduct; or (Eff.11/1/03,Ch.264.L.2003) (d) Where the offense charged is rape in the third degree as defined in subdivision three of section 130.25, or criminal sexual act in the third degree as defined in subdivision three of section 130.40, in addition to forcible compulsion, circumstances under which, at the time of the act of intercourse or deviate sexual intercourse, the victim clearly expressed that he or she did not consent to engage in such act, and a reasonable person in the actor's situation would have understood such person's words and acts as an expression of lack of consent to such act under all the circumstances. (Eff.11/1/03,Ch.264.L.2003)

^{ix} The state of New York defines domestic violence as a pattern of coercive tactics, which can include physical, psychological, sexual, economic and emotional abuse, perpetrated by one person against an adult intimate partner, with the goal of establishing and maintaining power and control over the victim. This definition is applicable to criminal prosecutions for domestic violence in New York, but may differ from the definition used on campus to address policy violations.

^x Examples:

- Employee A has been in an intimate relationship with Employee B for over a year; Employee A punches Employee B in the face during an argument (Dating Violence).
- Student A has been in an intimate relationship with Student B for over a year; Students A & B live together. During an argument, Student A shoves Student B to the ground (Domestic Violence).

^{xi} The state definition of stalking is applicable to criminal prosecutions for stalking in New York, but may differ from the definition used on campus to address policy violations. NY Stalking law:

Penal Code § 120.45. Stalking in the fourth degree. 1999. A person is guilty of stalking in the fourth degree when he or she intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct:

4. is likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person's immediate family or a third party with whom such person is acquainted; or

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5. causes material harm to the mental or emotional health of such person, where such conduct consists of following, telephoning or initiating communication or contact with such person, a member of such person's immediate family or a third party with whom such person is acquainted, and the actor was previously clearly informed to cease that conduct; or
 6. is likely to cause such person to reasonably fear that his or her employment, business or career is threatened, where such conduct consists of appearing, telephoning or initiating communication or contact at such person's place of employment or business, and the actor was previously clearly informed to cease that conduct.

Stalking in the fourth degree is a class B misdemeanor.

Penal Code § 120.50. Stalking in the third degree. 1999. A person is guilty of stalking in the third degree when he or she:

4. Commits the crime of stalking in the fourth degree in violation of section 120.45 of this article against three or more persons, in three or more separate transactions, for which the actor has not been previously convicted; or
5. Commits the crime of stalking in the fourth degree in violation of section 120.45 of this article against any person, and has previously been convicted, within the preceding ten years of a specified predicate crime, as defined in subdivision five of section 120.40 of this article, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or
6. With intent to harass, annoy or alarm a specific person, intentionally engages in a course of conduct directed at such person which is likely to cause such person to reasonably fear physical injury or serious physical injury, the commission of a sex offense against, or the kidnapping, unlawful imprisonment or death of such person or a member of such person's immediate family; or
7. Commits the crime of stalking in the fourth degree and has previously been convicted within the preceding ten years of stalking in the fourth degree.

Stalking in the third degree is a class A misdemeanor.

NY CLS Penal § 120.55. Stalking in the second degree. 1999. Amended 2003. A person is guilty of stalking in the second degree when he or she:

3. Commits the crime of stalking in the third degree as defined in subdivision three of section 120.50 of this article and in the course of and in furtherance of the commission of such offense: (i) displays, or possesses and threatens the use of, a firearm, pistol, revolver, rifle, shotgun, machine gun, electronic dart gun, electronic stun gun, cane sword, billy, blackjack, bludgeon, metal knuckles, chuka stick, sand bag, sandclub, slingshot, [fig 1] slungshot, shirken, "Kung Fu Star", dagger, dangerous knife, dirk, razor, stiletto, imitation pistol, dangerous instrument, deadly instrument or deadly weapon; or (ii) displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or
4. Commits the crime of stalking in the third degree in violation of subdivision three of section 120.50 of this article against any person, and has previously been convicted, within the preceding five years, of a specified predicate crime as defined in subdivision five of section 120.40 of this article, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or
5. Commits the crime of stalking in the fourth degree and has previously been convicted of stalking in the third degree as defined in subdivision four of section 120.50 of this article against any person; or
6. Being twenty-one years of age or older, repeatedly follows a person under the age of fourteen or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place such person who is under the age of fourteen in reasonable fear of physical injury, serious physical injury or death [fig 1] ; or
7. (Added, L 2003) Commits the crime of stalking in the third degree, as defined in subdivision three of section 120.50 of this article, against ten or more persons, in ten or more separate transactions, for which the actor has not been previously convicted.

Stalking in the second degree is a class E felony.

Penal Code § 120.60. Stalking in the first degree. 1999. Amended 2000. A person is guilty of stalking in the first degree when he or she commits the crime of stalking in the third degree as defined in subdivision three of section 120.50 or stalking in the second degree as defined in section 120.55 of this article and, in the course and

furtherance thereof, he or she:

5. intentionally or recklessly causes physical injury to the victim of such crime; or
6. commits a class A misdemeanor defined in article one hundred thirty of this chapter, or a class E felony defined in section 130.25, 130.40 or 130.85 of this chapter, or a class D felony defined in section 130.30 or 130.45 of this chapter.

Stalking in the first degree is a class D felony.

^{xii} Examples

- Employee A recently ended an intimate relationship with Employee B. For the past three weeks, B has been sending A 100 text messages per day and waits by A's car at the end of each day to beg and plead with her to take him back. When she refuses, he loses control, makes threatening gestures, and tells her she will regret this. Employee A indicates she is fearful of what B might do to her (Stalking).
- Mark is a student on campus who has always been fascinated by women who dye their hair. One day, he notices MaryLou, whose hair is dyed a very bright purple. He follows her home to see where she lives, and begins to track her history, actions and movements online. His fascination increases to the point where he follows her frequently on campus, takes pictures of her without her permission, and spies through her window at night with a long-range camera lens. He wants to have her beautiful purple hair for his own, so that he can stroke it whenever he wants.

^{xiii} If circumstances require, the President or Title IX Coordinator or designee may designate another person to oversee the process below, should a grievance be made against the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

Student Sanctions

One or more of following sanctions may be imposed upon any student for any single violation of the *Code of Student Conduct*:

- *Written Warning*. Written notice to the student that his/her actions are inappropriate and the individual must act more responsibly in the future. A Written Warning also indicates that should the individual again be referred for disciplinary action more serious sanctions will be assigned.
- *Probation*. A notice to the student that his/her actions are of a serious nature within the College community. Probation will be for a designated period of time and includes the probability of more severe disciplinary sanctions if the student is found to be violating any College policies during the probationary period. For resident students, any violation committed during the probationary period will result in a review of the student's housing assignment. This sanction results in the loss of two (2) priority points.
- *Disciplinary Probation*. A notice to the student that his/her actions are unacceptable within the College community. This sanction will be primarily used in cases of serious or consistent policy violations. Disciplinary Probation will be for a designated period of time and includes the probability of more severe disciplinary sanctions if the student is found to be violating any College policies during the probationary period. Any violation committed during the probationary period will result in a review of the student's status at Marist. This sanction results in the loss of three (3) priority points.
- *Deferred Suspension from the Residence Hall*. A definite period of observation and review. If a student is again found responsible for any further College policy violations including failure to complete previously imposed sanctions or adhere to previously imposed conditions, restriction from College-operated housing and housing grounds will be immediately imposed for a definite period of time. This sanction results in the loss of four (4) priority points. Any student on Deferred Residence Hall Suspension may not be allowed to participate in the housing room selection process and therefore not be eligible for college housing.
- *Residence Hall Expulsion*. Permanent removal of the student from the residence facility. This sanction most likely will result in a student being permanently banned from all residence facilities. (Please note that students dismissed from the residence facility for disciplinary reasons will not be entitled to any refund of residence fees).
- *Deferred Suspension from the College*. A definite period of observation and review. If a student is again found responsible for any further College policy violations including failure to complete previously imposed sanctions or adhere to previously imposed conditions, at minimum, the student may automatically be recommended for suspension for a minimum of one semester. This sanction

results in the loss of six (6) priority points.

- *Suspension*. Suspension. Separation from the College for a specified minimum period of time, after which the student is eligible to return. Eligibility may be contingent upon satisfaction of specific conditions noted at the time of suspension. The student is required to vacate the campus within 24 hours of notification of the action, though this deadline may be extended upon application to, and at the discretion of, the Director of Student Conduct or hearing body. During the suspension period, the student is banned from college property and the student's presence at any College-sponsored activity or event is prohibited. This sanction may be enforced with a trespass action as necessary. Students are suspended for disciplinary reasons are not entitled to any refund of tuition or residence fees.
- *Expulsion*. A permanent separation of the student from the College. The student is banned from college property and the student's presence at any College-sponsored activity or event is prohibited. This sanction may be enforced with a trespass action as necessary. Students that are expelled for disciplinary reasons are not entitled to any refund of tuition or residence fees.
- *Loss of Privileges*. Denial of specified privileges for a designated period of time. These include, but are not limited to:
 - a. A restriction from hosting visitors and/or guests.
 - b. A restriction from being a visitor in or entering a specified Residence Facility.
 - c. Restriction from College-sponsored extracurricular activities both on and off campus (including Senior Week and Commencement).
 - d. Other restrictions, as approved by the Student Conduct Officer.
- *Substance Education Program*. A workshop, in person or online, addressing substance abuse education issues. Referral to an off-campus education diversion program may also be recommended.
- *Restitution*. Compensation for loss, damage or injury. This may take the form of appropriate community service and/or monetary or material replacement.
- *Monetary Fines*. The College generally does not impose fines for violations of the Code of Student Conduct. However; fines will be imposed for violations that impact the health and/or safety of members of the Marist Community. Please refer to the Alcohol Policy, Windows/Doors, Walls Policy, and the Fire and Safety Regulations for specific information.
- *Behavioral Requirement*. This includes required activities including, but not limited to, seeking academic counseling or substance abuse screening, writing a letter of apology, etc.
- *Mandated Room Reassignment*. A notice that the behavior merits the immediate relocation of the student to another campus residence. This decision will be made in conjunction with the Office of Housing and Residential Life.
- *Mandated Counseling Assessment and Compliance*. The student must attend an assessment and/or

session in the Counseling Center or an off-campus licensed facility by a specific date. Unless otherwise stated by the student conduct body, the student is required to follow all recommendations made by the Counseling Center or off-campus licensed facility as a result of the assessment.

- *Discretionary Sanctions.* Work assignments, community service, and other related sanctions that meet with the approval of the Director of Student Conduct. Other sanctions include but are not limited to:
 - a. Letters of apology/thank you
 - b. Essay or research paper on assigned topics
 - c. Disqualification from future housing selection process
 - d. Program presentations
- *Withholding Diploma.* The College may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has a grievance pending, or as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree.* The College reserves the right to revoke a degree awarded from the College for fraud, misrepresentation or other violation of College policies, procedures or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- The following sanctions may be imposed upon groups or Student Organization(s) found to have violated the Student Code of Conduct:
 - a. Those sanctions listed in above.
 - b. Suspension or Expulsion of Student Organization includes temporary or permanent loss of recognized status with the College.
 - c. Additional sanctions specific to Student Organizations which may be found in the organization's constitution, the Office Greek Affairs, or the Office of Student Activities policies and a national affiliate, if applicable.
- Priority Point Loss: Any student on deferred residence hall suspension or those that lost six (6) priority points or more will not be allowed to participate in the housing room selection process and may not be eligible for college housing. Incidents that occur during the spring semester could impact a student's eligibility to participate in the room selection process for the fall semester.
- More than one of the sanctions listed above may be imposed for any single violation.
- Other than Suspension and Expulsion, disciplinary sanctions will not be made part of the student's permanent file but will become part of the student's confidential disciplinary record maintained in the Office of Student Conduct as per FERPA requirements.
- In some instances, a recommend sanctions may be based on a lack of detailed knowledge of how the sanction will be developed and supervised. In those instances, the sanction may be developed by the Title IX Coordinator or designee, who will determine if the sanction is appropriate, and whether or not to create a new sanction that is directly proportionate to the recommended sanction.