

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

MARIST

USE AND ADAPTATION OF THIS MODEL WITH CITATION TO THE NCHERM GROUP/ATIXA
IS PERMITTED THROUGH A LICENSE
TO MARIST COLLEGE
ALL OTHER RIGHTS RESERVED.
©2014. THE NCHERM GROUP, LLC/ATIXA

Table of Contents

I.	Introduction.....	4
II.	Purpose	4
III.	Scope	4
IV.	Inquiry Contacts	5
V.	Policy	6
	a. Nondiscrimination Statement	6
	b. Accommodation of Disabilities	6
	i. Students with Disabilities	6
	ii. Employees with Dishabilles	6
VI.	Prohibited Conduct Under the Policy	7
	a. Discrimination	7
	b. Discriminatory Harassment	7
	c. Gender-Based Harassment	8
	d. Gender-Based Misconduct	8
	e. Sexual Harassment	8
	f. Sexual Misconduct	8
	g. Non-Consensual Sexual Intercourse	9
	h. Non-Consensual Sexual Contact	9
	i. Sexual Exploitation	9
	j. Stalking	9
	k. Dating Violence	10
	l. Domestic Violence	10
	m. Retaliation	10
VII.	Other Prohibited Conduct	10
VIII.	Other Important Definitions and Terms Related to this Policy.....	11
	a. Accused	11
	b. Affirmative Consent	11
	c. The Six Guiding Principles Regarding Sexual Consensual Activity	11
	d. Minors	12
	e. Bystander	12
	f. Coercion	12
	g. Confidentiality	12
	h. Clery Reporting	12
	i. Incapacitation	13
	j. Reporting Individual	13
	k. Responding Individual	13
IX.	Policy Expectation with Respect to Consensual Relationships	13
X.	Reporting Harassment, Discrimination, and Prohibited Conduct Under this Policy	15
	a. Contacts	15
XI.	Confidential Reporting	16
	a. On-Campus Resources	16
	b. Off-Campus Resources	16
	c. Law Enforcement Resources	16
XII.	Student Alcohol and Drug Use Amnesty Policy When Reporting Sexual Misconduct ...	17
XIII.	Cases of Continual Threat and Timely Warning Obligations.....	17
XIV.	The College’s Process for Investigating and Resolving Reports of Discrimination, Harassment, and Sexual Misconduct	18

a.	Notification of Rights	18
b.	Advisors	19
c.	Interim Measures	19
d.	No Contact Orders	20
e.	Orders of Protection Issued by Criminal or Civil Courts	20
f.	Process	21
i.	Conflict Resolution	21
ii.	Formal Resolution: Investigation Process	21
iii.	Formal Resolution Options of Reported Misconduct	23
1.	Resolution Without a Hearing	23
2.	Formal Hearing	24
iv.	Notification of Charges	24
XV.	Hearing Procedures	25
XVI.	Sanctions	27
a.	Student Sanctions	27
b.	Employee Sanctions	27
XVII.	Transcript Notation	27
XVIII.	Withdrawal or Resignation While Charges Pending	27
XIX.	Appeals	28
XX.	Failure to Complete Sanctions/Comply with Responsive Actions	29
XXI.	Records	29
XXII.	Legal Challenges	29
XXIII.	Revision	29
XXIV.	Appendixes	30

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

Introduction

Marist College is dedicated to providing an educational environment that is free of any form of discrimination and harassment and remains committed to promoting fairness and equity in all aspects of the educational experience. In accordance with applicable federal and state laws, the College strives to eliminate any form of discrimination, harassment, and sexual misconduct, prevent its recurrence, and address its impact on our community.

Purpose

The purpose of this policy is to ensure that all members of the College, including visitors and third party vendors, can live, learn, and work in a safe and respectful environment. In the event that a situation arises that triggers the procedures outlined by this policy:

- The College will take steps to prevent the behavior, to prevent any recurrence, and take appropriate action to remedy the effects of the behavior;
- The College will provide for the prompt and equitable resolution of allegations and complaints brought by the reporting party (the individual who believes they were harmed) and the responding party (the individual whose actions are being evaluated as to whether a policy violation has occurred).

Scope

The following policy and process applies to all students, faculty, administrators and/or staff, applicants for employment, interns whether paid or unpaid, contractors and persons conducting business, regardless of immigration status, with Marist College.

This policy applies to behaviors that take place on the campus and at College-sponsored/controlled events. Behaviors cited in this policy that occur off-campus, on/at private property, online, including calls, texts, emails, and social media, or business travel, even if they occur on personal devices or during non-work hours, may still be addressed by the College 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 State law. This includes, but is not limited to, single or repeat violations of any local, state or federal law committed in the vicinity 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 creates significant disruption, and/or
- d) Any situation that is detrimental to the educational interests of the College.

In a case where either the reporting party or responding party falls under the purview of another institution, the Title IX Coordinator or designee may liaison with the Title IX Coordinator from the controlling institution to address remedies/discipline.

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

Edward Freer
Deputy Title IX Coordinator
Office of Human Resources
Donnelly Hall 120
845-575-3799
titleix@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/>

POLICY

NONDISCRIMINATION STATEMENT

Marist College adheres to all federal, state, and, where applicable, local 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. Any member of the campus community, guest or visitor who acts to deny, deprive or limit the educational, employment, housing, social access, financial aid and scholarship, benefits and/or other services and 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 College policy. When brought to the attention of the College, any such discrimination will be appropriately remedied by the College according to outlined policy and procedures.

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 complying with all provisions of the American Disabilities Act (ADA) and state and local disability laws, as applicable. Consistent with the aforementioned nondiscrimination statement, the College will provide qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs, activities, and opportunities of the College.

All accommodations are made on a case-by-case basis. The College encourages individuals with disabilities to make a request for an accommodation to contact the Office of Accommodation and Accessibility. After reviewing the documentation provided by the

student and, in consultation with the student, a determination as to which accommodations are appropriate to the student's particular needs and academic programs will be made, provided that such accommodation does not constitute an undue hardship.

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.

PROHIBITED CONDUCT UNDER THIS POLICY

Discrimination

Discrimination is defined as treating members of a protected class less favorably because of their membership in that class or as having a neutral policy or practice that adversely impacts the members of one protected class more than others.

Discriminatory Harassment

Students, staff, administrators, faculty, and interns are entitled to a working environment and educational environment free of discriminatory harassment. 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. Harassment constitutes a form of discrimination that is prohibited by law. Harassment is defined as subjecting an individual to unwelcome conduct, whether verbal or physical, that creates an intimidating, hostile, or abusive working, learning or campus living environment; that alters the conditions of employment or education; or unreasonably interferes with an individual's work or academic performance on the basis of the individual's membership in a protected class. Harassment may include, but is not limited to: verbal abuse; slurs; negative stereotyping; threatening, intimidating or hostile acts; denigrating jokes; insulting or obscene comments or gestures; and display or circulation (including in hard copy, by email or text, or through social media) in the working, learning and living environment of written or graphic material that degrades or shows hostility or aversion toward an individual or group. Sexual harassment and gender-based harassment (later defined in further detail) are forms of discriminatory harassment.

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 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 Office of Human Resources and students should contact the Director of Student Conduct.

Academic Freedom

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.

Gender-Based Harassment

Acts of aggression, intimidation, stalking, or hostility based on gender or gender-stereotyping constitute gender-based harassment. Gender-based harassment can occur if individuals are harassed either for exhibiting what is perceived as a stereotypical characteristic of their sex, or for failing to conform to stereotypical notions of masculinity or femininity. To constitute harassment, the conduct must reasonably interfere with another person's education or participation in educational programs or activities or work, or create an intimidating, hostile, demeaning, or offensive working, academic, or living environment.

Gender-Based Misconduct

Gender-based misconduct is a broad term that encompasses gender-based harassment, sexual harassment, sexual assault, sexual exploitation, stalking, dating violence, and domestic violence.

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.

Sexual harassment is unwelcome, sexual or gender-based verbal, written, online and/or physical conduct. The following describes some of the types of acts that may be unlawful and are strictly prohibited:

- Physical acts of a sexual nature, such as: touching, pinching, patting, kissing, hugging, grabbing, brushing against another individual's body or poking another's body. Rape, sexual battery, molestation, or attempts to commit these assaults are also examples.
- Unwanted sexual advances or propositions, such as: requests for sexual favors accompanied by implied or overt threats concerning the target's academic work/grades/standing, job performance evaluation, a promotion or other job benefits or detriments; subtle or obvious pressure for unwelcome sexual activities.
- Sexually oriented gestures, noises, remarks, or jokes, or comments about a person's sexuality or sexual experience, which create a hostile work environment.
- Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of a particular sex should act or look.
- Sexual or discriminatory displays or publications anywhere in the classroom/workplace, such as: displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials or other materials that are sexually demeaning or pornographic. This also includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace.
- Hostile actions taken against an individual because of that individual's sex, sexual

orientation, gender identity, and the status of being transgender, such as: interfering with, destroying or damaging an individual's work, workstation, tools or equipment, or otherwise interfering with the individual's ability to succeed academically or to perform the job; sabotaging, bullying, yelling, and name-calling.

Refer to Appendix D for a list of possible examples

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

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, or
- is based on power differentials (*quid pro quo*), the creation of a hostile environment or retaliation.

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. The College considers Non-Consensual Sexual Intercourse violations to be the most serious, and therefore imposes the most severe sanctions, typically suspension or expulsion for students and termination for employees.

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:

Sexual Harassment (as defined in the section 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 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.

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.

Stalking

A course of unwanted attention that is repeated or obsessive, directed toward an individual or a group and that is reasonably likely to cause alarm, fear or substantial emotional distress. Stalking may take many forms, including lying in wait for, monitoring, and/or pursuing contact. Stalking may occur in person or through communications such as telephone calls, text messages, unwanted gifts, letters, emails, surveillance, or other types of observation.

Dating Violence

The use of physical violence, coercion, threats, intimidation, isolation, stalking, or other forms of emotional, psychological, sexual, technological, or economic abuse directed toward a person who is or has been in a social relationship of a romantic or sexually intimate nature with the victim. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, or physically injure someone. Dating violence can be a single act or a pattern of behavior in relationships.

Domestic Violence

The use of physical violence, coercion threats, intimidation, isolation, stalking, or other forms of emotional, psychological, sexual, technological, or economic abuse directed toward a) a current or former spouse or intimate partner; b) a person with whom one shares a child; or c) anyone who is protected from the responding party's acts under the domestic or family violence laws of New York. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, or physically injure someone. Domestic violence can be a single act or a pattern of behavior in relationships.

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. Adverse action need not be job-related or occur on the campus or in the workplace (ie. threats of violence outside of work hours) to constitute unlawful retaliation. 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. In instances where the alleged harassment does not turn out to rise to the level of a violation of law, the individual is protected from retaliation if the person had a good faith belief that the practices violated College policy and/or were unlawful. In turn, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.

OTHER PROHIBITED CONDUCT

- 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
- 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
- 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.

The College reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/ termination of employment, for harassment, discrimination, or an 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. *However, informal resolution and mediation will never be options to remedy any acts of sexual violence and/or non-consensual forcible touching. See Appendix B for a Full List of Sanctions*

OTHER IMPORTANT DEFINITIONS AND TERMS RELATED TO THIS POLICY

Accused

Accused shall mean a person accused of a violation who has not yet entered the College's judicial or conduct process; for this policy, the accused is referred to as the Responding Party.

Affirmative Consent

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.

The Six Guiding Principles regarding Sexual Consensual Activity

In addition to the state definition, the following principles will be used to evaluate whether sexual activity was consensual and in violation of College policy:

- 1) Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act;
- 2) Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- 3) Consent may be initially given, but withdrawn at any time.
- 4) Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending upon the degree of intoxication, an individual who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
- 5) Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- 6) When consent is withdrawn or can no longer be given, sexual activity must stop.

Minors

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. The College adopts this prohibition of sexual activity by adults with minors on all College property and at any and all College-sponsored activities or functions outside of New York regardless of out-of-state laws.

Bystander

In the context of this policy, “bystander” is defined as a person who observes a crime, an impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of College policy.

Coercion

Coercion is verbal and/or physical conduct, including manipulation, intimidation, unwanted contact, and express or implied threats of physical, emotional, or other harm, that would reasonably place an individual in fear of immediate or future harm and that is used to compel someone to engage in sexual contact.

Confidentiality

“Confidentiality” may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials, in a manner consistent with state and federal law, including but not limited to 20 U.S.C. 1092 (f) and 20 U.S.C. 1681 (a). Counseling Services, Health Services, and ordained priests are example of college employees who may offer confidentiality.

Clery Reporting

Clery reporting refers to the data collected by the Department of Public Safety on violent crimes (including sexual assault/rape, domestic violence, dating violence, and stalking) occurring on or near College property and compiled in the College’s Annual Security Report. Only aggregate data is reported and no personally identifiable information is collected. For more information on Clery Reporting, please review the Annual Security Report or contact the Office of Safety and Security.

Incapacitation

Incapacitation occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. A person who is incapacitated cannot make a rational, reasonable decision because the person lacks the ability to understand his or her decision.

- Incapacitation may be associated with an individual lacking consciousness; being asleep; being involuntarily restrained; having a disability that impedes consent; or if an individual otherwise cannot consent due to other forms of helplessness. Specifically, under New York State law, a person under the age of 17 lacks the capacity to give consent.
- Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
 - How drugs and alcohol affect consent:

- The impact of alcohol and other drugs varies from person to person. Warning signs that a person may be incapacitated or approaching incapacitation as a result of alcohol or drug use may include, but are not limited to: slurred or incomprehensible speech, vomiting, unsteadiness, combativeness, or emotional volatility.
 - Individuals should be aware of, and carefully consider, the potential consequences of the use of alcohol or drugs. Alcohol and drugs can lower inhibitions and create an atmosphere of confusion over whether consent is freely and affirmatively given.
- Whether sexual activity with an incapacitated person constitutes gender-based misconduct may depend on whether the Responding Party knew or should have known of the Reporting Party's incapacitation based on objectively and reasonably apparent indications when viewed from the perspective of a sober, reasonable person in the Responding Party's position.
 - Being intoxicated, impaired, or incapacitated by alcohol or other drugs is never an excuse for committing a policy violation and does not diminish anyone's responsibility to obtain informed and freely-given consent.
 - The use of alcohol or other drugs never makes someone at fault for experiencing gender-based conduct.

Reporting Individual

Reporting individual will encompass the terms victim, survivor, complainant, claimant, or witness with victim status.

Responding Individual

Responding individual will mean a person accused of a violation who has entered the College's judicial or conduct process.

POLICY EXPECTATIONS WITH RESPECT TO CONSENSUAL RELATIONSHIPS

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.

REPORTING HARASSMENT, DISCRIMINATION, AND PROHIBITED CONDUCT 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.

The College encourages individuals, who believe that they have experienced discrimination, harassment, or other prohibited conduct defined by this policy, to bring their concerns to the College's attention immediately. While there is no time limit for submitting a complaint of prohibited behavior, early reporting and intervention tend to be most effective in the College's ability to investigate and respond, particularly if the subject remains in the College's jurisdiction. The College will take allegations of prohibited conduct seriously. All reports will be acted on

promptly, and the College will initiate measures to stop the behavior, prevent its reoccurrence, and remedy the effects while making every effort to preserve the privacy of reports.

Individuals on the Poughkeepsie campus reporting any form of harassment, discrimination and other prohibited conduct, including sexual misconduct and sexual violence may contact:

Christina Daniele

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

Edward Freer

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

Kaleigh Sosa

Title IX Investigator
Office of Human Resources
Donnelly Hall 120
845-575-3278
titleix@marist.edu

Reports can be made:

Via phone at 845-575-3799

Via e-mail at titleix@marist.edu

Via online at <https://cm.maxient.com/reportingform>

Via mail at 3399 North Road, Human Resources, Donnelly Hall, 120, Poughkeepsie, NY 12601

Via hand delivery/campus mail to Human Resources, Donnelly Hall, Suite 120

If an incident occurs abroad or during a Marist study abroad sponsored program, contact the individual leading the Marist program. The individual who is leading the Marist study abroad program is required to report the information learned to the Title IX Coordinator or designee. If an incident occurs outside of regular business hours, the Office of Safety and Security can receive reports at any time, as it is a 24hr/7 days per week operation. Emergency access to the Title IX Coordinator or designee and other appropriately, trained officials is provided at all times by informing the Office of Safety and Security. When an individual makes a report to a College employee who is required to report the incident, the Title IX Coordinator and/or Deputy or designee is notified, and the Title IX Office will investigate reported incidents.

All reported incidents are centrally tracked in order to review for patterns and to assist in stopping the recurrence of similar incidents.

Confidential Reporting

If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with:

On-Campus Resources

- Counseling Services: 845-575-3314
- Health Services: 845-575-3270
- Father Ulrich: ext.2275 or John.Ulrich@marist.edu

Counseling Services may be contacted after hours by calling Campus Safety at 845-575-2282 and asking for the on-call counselor. There is no need to leave your name. Just leave your phone number and the counselor will call you back. Campus counselors are available for students free of charge and can be seen on an emergency basis during normal business hours.

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.

- Employee Assistance Program (*available to employees only*):
 - 845-338-5600 Mon.-Fri. 8am-8pm; Sat.-Sun. 9am-5pm
 - 845-338-5450 (after hours)

Off-Campus Counseling and Advocacy Resources

- Dutchess County Helpline: (845)-485-9700
- Dutchess County Family Services: (845) 452-1110
- New York State Sexual Violence Hotline
 - English: 1-800-942-6906
 - English TTY: 1-800-818-0656
 - Spanish: 1-800-942-6908
 - Spanish TTY: 1-800-780-7660

Law Enforcement Resources

- Town of Poughkeepsie Police: 845-485-3666
- NYS Campus Sexual Assault Victims Unit: 1-844-845-7269

Off-campus local rape crisis counselors, domestic violence resources, and local or state assistance agencies will maintain confidentiality, except in extreme cases of immediate threat, danger and/or abuse of a minor.

Student Alcohol and Drug Use Amnesty Policy When Reporting Sexual Misconduct

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 disciplinary action under the College's Code of Conduct for violations of alcohol and/or drug abuse occurring at or near the time of the commission of the domestic violence dating violence, stalking, or sexual assault.

Cases of Continual Threat and Timely Warning Obligations

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. In cases where the reporting individual requests confidentiality and the circumstances allow the College to honor that request, the College will offer interim supports and remedies to the individual and the community, but will not otherwise pursue formal action. In cases indicating pattern, predation, threat and/or violence, the College will be unable to honor a request for confidentiality. 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 the harmed individual'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.

When an investigation must occur to prevent further harm, the formal reporting process will still afford 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 harmed individual wishes a report to be made. Such information will be used to inform campus climate and educational efforts, generally.

Deliberately false and/or malicious accusations of harassment, discrimination, sexual misconduct, and sexual violence, as opposed to grievances which, even if erroneous, are made in good faith, are just as serious an offense and may be subject to appropriate disciplinary action.

The College's Process for Investigating and Resolving Reports of Discrimination, Harassment, Discrimination, and Sexual Misconduct

When notice of a violation of this policy has been received by the Title IX Coordinator, Deputy, or other College employee who is obligated to report, the College will take measures deemed necessary to appropriately respond to protect the reporting party, its students, faculty, staff, and third parties. Not all forms of harassment and discrimination will be deemed equally serious offenses, and the College reserves the right to impose different, yet appropriate measures, depending on the severity of the offense. The reporting party may choose to proceed with an informal or formal resolution. However, under this policy, informal resolution will not be used

to address situations of sexual violence or any kind of violence using force.

Notification of Rights

When the College receives notice that an act of sexual misconduct, including dating violence, domestic violence, sexual assault or stalking, has occurred either on or off College property, the College will provide the reporting individual with written materials outlining their rights and options for support and resources available both on and off campus. *Refer to Appendix B for the Student's Bill of Rights*

- a. Reporting individuals will be advised of having “the right to make a report to the Office of Safety and Security, local law enforcement, or State Police, or choose not to report; to report the incident to the College; to be protected by the College from retaliation for reporting an incident; and to receive assistance and resources from the College.” This information is printed and made available in the College’s Resource Guide as well as online. An individual may report an incident to either the College or law enforcement, or both simultaneously. The College’s process will run concurrently with the criminal justice process. However, the filing of a complaint of sexual misconduct under this policy is independent of any criminal investigation or proceeding. The College will not wait for the conclusion of any criminal investigation or proceedings to commence its own investigation or to take any necessary interim measures to protect the reporting party and the rest of the College community. The College, however, may temporarily delay its investigation to enable law enforcement to gather evidence and to engage in a preliminary investigation of sexual misconduct matters that may also violate the state criminal code. A delay in the College process will not exceed more than ten days unless there is a justified specific request by law enforcement to do so. Both parties will be notified in the event that the College needs to delay its process.

There may also be times when the Title IX Office and/or another designated office such as the Office of Safety and Security may contact the police regarding the nature of an alleged incident. Regardless, it is always the reporting party’s decision as to whether or not to cooperate with any police and/or College investigation.

- b. When the College receives notice, the reporting party has the right to have emergency access to the Title IX Coordinator or other appropriate official trained in interviewing victims of sexual assault. The individual will be provided information regarding options to proceed, and, where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible, and explaining that the criminal justice process utilizes different standards of proof and evidence and that any questions about whether a specific incident potentially violates the penal code can be addressed by a law enforcement liaison that the College can help to coordinate. Such official will explain whether or not he/she can offer the reporting individual confidentiality or privacy and inform them of any other potential reporting options.
- c. Reporting individuals will be notified that even Marist College offices and employees who cannot guarantee confidentiality will maintain their privacy to the greatest extent possible. The information provided to a non-confidential resource will be relayed only as necessary to the Title IX Office to investigate and/or seek a resolution.
- d. Reporting individuals will also receive informational materials about resources including intervention, mental health counseling, and medical services, which will

include information on whether such resources are available at no cost or for a fee. The College will also provide information on advocacy services and resources available through Family Services. *Refer to Appendix A for the Resource Brochure.*

Advisors

The Title IX Coordinator or designee will notify both the reporting and responding party of their right to use one advisor of their choice (including an attorney, parent, or advocate assigned from Family Services) who can assist, support, and advise them during the grievance process. The choice whether or not to invite an advisor is solely that of the reporting party and responding party. An advisor may not participate in the conduct process in any other capacity in reference to the same incident, including, but not limited to, serving as a witness, co-reporting party; or co-responding party. If an advisor's conduct is not consistent with these guidelines, the advisor may be excluded from the process. The availability of an advisor to attend an interview, conduct meeting, or hearing will not unreasonably interfere with or delay the proceedings.

Interim Measures

When the College deems them necessary to ensure safety, prevent retaliation, or avoid an ongoing hostile environment, it may implement initial interim and responsive and/or protective actions, if requested or if 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. Both the reporting party and the responding party will be afforded, upon request and consistent with College policies and procedures, to a prompt review, reasonable under the circumstances, of the need for and terms of any such interim measure that directly affects him or her, and both will have the opportunity to submit evidence in support of his or her request.

Factors determining which interim measures the College will take may include: the specific needs expressed by the reporting party; the age of the students involved; the severity or pervasiveness of the allegations; whether the reporting party and responding party share the same residence hall, class, or job location; and whether other court ordered judicial measures have been taken to protect the reporting party.

In the event the responding party is determined to present a continuing threat to the health and safety of the College community, the College may subject the reporting party to an interim suspension pending the outcome of the conduct process. 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 Title IX Coordinator/designee in collaboration with the appropriate administrative officer, this restriction can include classes and/or all other College activities or privileges for which the student or employee might otherwise be eligible. Alternative coursework options may be pursued to ensure as minimal an impact as possible on the accused student or employee.

Both the reporting and responding parties may request a review of the need and terms of the interim suspension, including potential modification, and will be allowed to submit information in support of their request.

No Contact Orders

After a reporting party makes a complaint of sexual misconduct, the College may institute a no contact order between the reporting party and the responding party. A no contact order is a directive prohibiting contact between or among designated individuals through any means, direct or indirect, including personal contact, email, telephone, text message, social media, or by the means of a third party.

In general, the Title IX Coordinator, Deputy, or designee will initially verbally issue a no contact order. Both parties will then receive the directive in writing.

If a reporting party and the responding party observe each other in the same place, it is the responsibility of the responding party to leave the area immediately and without making contact with the reporting party.

An individual who believes that a violation of the no contact order has occurred needs to report the violation to the Title IX Coordinator, Deputy or designee. Individuals who violate a no contact order are subject to further disciplinary action, such as a charge of retaliation and violation of the no contact order.

Both the reporting and responding party will, upon request and consistent with College policies and procedures, be afforded a prompt review reasonable under the circumstances, of the need and terms of any such interim measure, including potential modifications. Both parties are able to submit evidence in support of his or her request. The Title IX Coordinator, Deputy, or designee will determine within a reasonable timeframe whether there will be any modification.

Orders of Protection Issued by Criminal or Civil Courts

Separate from a no contact order issued by the College, a reporting party can seek an order of protection from both the criminal or civil (family) court system. The Title IX Office will place the student in touch with an advocate from Family Services who will be available to assist in obtaining a government court issued order of protection (or equivalent restraining order if outside New York State) and explain the consequences of violating such an order, including but not limited to arrest, additional conduct charges, and interim suspension. Both the reporting party and responding party have the right to receive a copy of the order of protection when received by the College. Either the Title IX Coordinator, Deputy, or designee, or an advocate from Family Services will be available to explain the order and answer any questions about it. If such order is violated, an individual may contact the Title IX Coordinator or Deputy to receive assistance in effecting an arrest.

Process

Following receipt of notice or a report of misconduct, the Title IX Coordinator or designee will conduct a preliminary inquiry to consider the nature of the report, the safety of the individual, the campus community, and the reporting parties' preference for resolution and provide an integrated and coordinated response to these reports. Within two business days, an initial determination is generally made whether a policy violation may have occurred.

After weighing all options, the reporting party will inform the Title IX Coordinator, Deputy, or designee how they would like to proceed with the following options:

1) Conflict Resolution

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, they may have the option to informally resolve the matter through conflict resolution. 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 the reporting party chooses not to initiate or participate in a formal grievance.

If the misconduct does not appear to violate College policy, and conflict resolution appears appropriate given the nature of the alleged behavior, then the report generally does not proceed to investigation. Informal resolution, while not as structured as the formal process, can be an effective and appropriate means to deal with the complaint. After weighing all options, if the reporting party wishes to continue with the informal process, then the Title IX Coordinator, Deputy, or designee will ascertain the name of the responding party, the date, location, and nature of the alleged misconduct. An intake meeting with the responding party will then be scheduled to go over the process and answer any questions. Both parties have the opportunity to have an advisor of choice accompany them for support throughout the process. In a conflict resolution meeting, the Title IX Coordinator, Deputy, or designee 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 a mechanism used to address reports of sexual violence or coerced/forced behavior of any kind or if there is evidence of a pattern of misconduct or a perceived threat of further harm to the community or any of its members. It is not necessary to pursue conflict resolution first in order to make a formal report, and anyone participating in conflict resolution can stop that process at any time and request formal resolution.

2) Formal Resolution: Investigation Process

When a preliminary inquiry 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 trained investigator(s) to conduct the investigation, usually within two business days of determining that a resolution should proceed. Both the reporting party and the responding party will receive in writing a notice of investigation that will:

- Notify them of a formal investigation into the conduct in question;
- Provide information as to the behavior that is alleged;
- Inform them of which provisions of the Policy the behavior under investigation may violate;

- Inform them of possible sanctions;
- Notify them that they will be provided the time and place for all meetings in relation to the conduct process
- Reiterate their right to bring an advisor of choice to their scheduled meetings.

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.

Evidence Gathered During the Investigation Process:

The sole purpose of the investigation is to gather information to be used in the determination as to whether the alleged conduct violates College policy.

- The responding party is presumed not to have violated the policy until there is an outcome decision. Depending on the nature of the initial allegation and the circumstances, the responding party can be suspended on an interim basis pending the outcome of the conduct process. Other interim measures may be also imposed on the responding party pending the outcome of the conduct process or the College's responsibility to maintain a safe community.
- The College uses the "Preponderance of Evidence" standard in determining whether the facts support a finding that it is more likely than not that the alleged misconduct occurred or did not occur.
- Both the reporting party and the responding party have the opportunity to review and present relevant evidence and information that will be used during the process, consistent with College policies and procedures and in accordance with the federal, state, and local laws involving FERPA. The evidence must be relevant to the allegation as to permit a meaningful opportunity to respond and an opportunity to offer responsive evidence and information.
- Sexual history with persons other than the other party involved in the process is excluded. Past findings of domestic violence, dating violence, stalking or sexual assault may only be admissible at the time of sanctioning. However, this limit does not cover evidence of prior sexual history with the responding party in the process that is relevant to the charge or defense. Both reporting and responding parties are able to provide an impact statement at the point in which an appropriate sanction is being deliberated.

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.

No audio or video recording (of any kind) of the meetings is permitted by either party, unless as a necessary accommodation. The Title IX Coordinator in consultation with the ADA 504 Coordinator will make the determination to grant the accommodation as needed.

At the conclusion of the investigation, the investigator(s) will prepare a report setting forth the facts gathered. Both the reporting and responding party will simultaneously receive the report to

review. Each has the opportunity to edit or offer clarifying information. The report is then forwarded to the Title IX Coordinator for resolution.

Formal Resolution Options 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. Both the reporting party and the responding party will simultaneously be advised in writing of the outcome, including a written report of the findings, a decision and any sanctions, rationale for the decision, and information on how to file an appeal. The College will not provide witnesses involved in the investigation with the outcome of the decision and 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 a resolution without a hearing or a formal hearing.

a. 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. 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. 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 and recommend an appropriate sanction or responsive action. *See Appendix C for a full list of sanctions.* 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 reporting party and the community. If either party rejects the sanction/responsive action, then a hearing will be held.

b. 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 process.

For students:

A hearing panel made up of trained faculty, staff, and/or administrators charged with hearing

cases brought before them that violate the Colleges discrimination policies, including Title IX violations, will be assembled. 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 to the hearing panel, none of whom have been previously involved with the investigation.

For faculty and staff:

For employees for whom no hearing process is available, The Title IX Coordinator will refer the findings to the Vice President for Human Resources and appropriate College official for sanctioning and implementation.

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.

Hearing Procedures

Hearings will be convened, usually within one to two weeks of the completion of the investigation, and will be conducted in private. The hearing panel 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 their jurisdiction. Accordingly, investigations should be conducted with as wide a scope as necessary.

In addition to the non-voting Chair and 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 will participate. 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 hearing 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 hearing panel. 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 hearing panel 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.

No one will present information or raise questions of either the reporting or responding party concerning: (1) incidents not directly related to the possible violation, unless they show a pattern, (2) the prior sexual history with persons other than the other party in the process, or (3) the character or mental health diagnosis and/or treatment of either party. Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible only at this stage to determine sanctioning.

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. Hearing panel 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. The parties and/or the persons who initiated the action confirm that they will protect the privacy of the information contained in the recording.

Upon completion of the hearing process, the hearing panel 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 hearing panel's 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.

Sanctions

Sanctions or responsive actions will be recommended by the hearing panel. 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 hearing panel
- 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

a. 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 C. 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.

b. 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.

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 responding party 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.

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.

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 from the hearing.

A three-member panel 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 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 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 appeal 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 re-hearings 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 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.

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.

Records

In implementing this policy, records of all grievances, resolutions, and hearings will be kept by the Title IX Coordinator or designee. All suspensions and dismissals are kept indefinitely in paper form and in a database.

Legal Challenges

If the College is asked to produce documentation for any proceeding which seeks to modify or remove a finding that a student was responsible for violating College policy, the College, absent a court order, will redact the name and/or identifying information of any student, including witnesses, prior to submission.

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.

Appendix A

What we do ...

24-hour telephone hotline
Crisis intervention
Emotional support
Advocacy
Information and referrals

Advocacy
24-hour assistance to victims of violence, including safety planning and accompaniment to medical (including sexual assault exams), court, housing, legal, and social services, as well as assistance with filing compensation claims with the NYS Office of Victim Services.

Counseling
Individual and therapeutic counseling to victims and secondary victims of violence and crime. Services are provided in individual sessions and/or support groups.

Children Services
Individual therapy, therapeutic play, and other services for children and adolescents who are victims or secondary victims of violence and crime.

Community Outreach/Volunteer and Student Intern Program
Opportunities for education of community members, volunteers, and help placement for students. Volunteers must be certified through an approved NYS Department of Health 40-hour training program for certification as Rape Crisis Counselors.

Contact us
24-hour hotlines
Rape crisis & crime victims
8 4 5 . 4 5 2 . 7 2 7 2

Domestic violence
8 4 5 . 4 8 5 . 5 5 5 0

Center for Victim Safety and Support
79 North Hamilton Street
Poughkeepsie, NY 12601

Non-emergency scheduling
845.452.1110, ext. 3083
1171.845.790.5919
Fax: 845.452.7298

www.family-services.org

Family Services
A Division of the Office of Children and Family Services

Center for Victim Safety and Support

Previously the Crime Victim Assistance & Domestic Violence Services Program
Specializing in domestic violence, sexual assault, and crime victim services.

Family Services
A Division of the Office of Children and Family Services

This program is partially funded by the County of Dutchess, New York State Office of Victim Services, New York State Department of Health, New York State Department of Criminal Justice Services, New York State Office of Children and Family Services.

24-hour hotlines
Rape crisis & crime victims
8 4 5 . 4 5 2 . 7 2 7 2

Domestic violence
8 4 5 . 4 8 5 . 5 5 5 0

All services are:
• FREE
• ACCESSIBLE
• CONFIDENTIAL

Help is Available You are not alone...

- Emotional, psychological, and/or financial abuse
- Isolation
- Stalking
- Physical violence
- Threatening and/or controlling behavior
- Domestic violence or dating violence
- Rape (including: marital, acquaintance, date)
- Incest
- Sexual abuse and molestation
- Harassment
- Other crimes including but not limited to: stalking, homicide, robbery, elder abuse, and human trafficking

We are here to listen 24 hours a day

The Family Services' Center for Victim Safety and Support assists individuals and families through a variety of direct services and collaborative community responses for victims and secondary victims of:

- Domestic/Dating Violence
- Sexual Assault/Abuse
- Other crimes including but not limited to: stalking, homicide, robbery, elder abuse, and human trafficking

"I do not know what would have happened in my situation without the support and advocacy of the staff. The therapy was a life changer and settled most of my fears, flashbacks and nightmares of the assault. Life has dramatically improved thanks to the services I received."
-Survivor of Sexual Assault

"The support and understanding I received was so beneficial that words can't describe. The people I worked with were great! Having support at court really reduces the anxiety and helps me think clearly."
-Survivor of Domestic Violence

As a victim you have the right to be...

INFORMED by law enforcement officers about local services.
SUPPORTED by an advocate throughout the criminal justice process.
PROTECTED from threats or intimidation from the suspect or the suspect's family.
NOTIFIED by the District Attorney about certain steps in your case.

For more information about your rights, you can also contact the New York State Office of Victim Services at 800.247.6855 or visit the web at www.ovs.ny.gov

Center for Victim Safety and Support
All our services are:
• FREE
• ACCESSIBLE
• CONFIDENTIAL

The Center for Victim Safety and Support has a staff of social workers, attorneys, nurses, court advocates, police officers, interpreters & gender advocates (LGBTQ, women, transgender people), staff, advocates and volunteers.
Services are also available in Spanish.

Appendix B

Last Updated 10/9/2018

Student Bill of Rights
Under the “Enough is Enough” Legislation, Section 129(b) of
the NY Education Law:

All students have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. 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;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
6. 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;
7. Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. 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;
9. Access to at least one level of appeal of a determination;
10. 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,
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.

Appendix C

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.

Appendix D

Some examples of possible Sexual Harassment include:

Last Updated 10/9/2018

- 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. (quid pro quo)
- 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.