

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

MARIST

Spring 2025

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

### **Introduction**

Marist University provides an educational environment that is free of any form of discrimination and harassment and is committed to providing and promoting fairness and equity in all aspects of the educational experience. In accordance with applicable federal and state laws, the University 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 University, 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 University will take steps to prevent the behavior, to prevent any recurrence, and take appropriate action to remedy the effects of the behavior;
- The University will provide for the prompt and equitable resolution of allegations and complaints brought by the Complainant (the individual who believes they were harmed) and the Respondent (the individual accused of a policy violation).

### **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 University.

This policy applies to all misconduct that occurs under the University's program and activity and outside the program and activity when the conduct alleged contributes to a hostile environment. 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 when the Title IX Coordinator or other designated official determines that the off-campus conduct affects a substantial University interest. A substantial University interest is defined to include:

- Any action that constitutes a 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 University is located;
- Any situation where it appears that the accused individual may present a danger or threat to the health or safety of self or others;
- Any situation that significantly infringes upon the rights, property or achievements of self or others or creates significant disruption, and/or
- Any situation that is detrimental to the educational interests of the University.

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

**Contact Information**

For internal inquiries regarding the enclosed policies and procedures or to report violations of the Discrimination, Harassment and Sexual Misconduct Policy, please contact:

**Kelly Yough**

Director of Equity and Title IX Coordinator  
(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  
Telephone: (800) 421-3481  
Fax: (202) 453-6012  
TDD: (800) 877-8339  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

**Local OCR office contact information:**

New York Office  
Office for Civil  
Rights  
U.S. Department of Education  
32 Old Slip, 26<sup>th</sup> Floor  
New York, NY 10005-2500  
Phone (646) 428-3900;  
Fax: (646) 428-3843  
TDD: (800) 877-8339  
Email: [OCR.NewYork@ed.gov](mailto:OCR.NewYork@ed.gov)

**New York State Division of Human Rights 800-HARASS-3 (800) 427-2773).**

The hotline can be called Monday through Friday, 9:00 a.m. to 5:00 p.m.

**Equal Employment Opportunity Commission (EEOC)**

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

**Nondiscrimination Statement**

Marist University adheres to all federal, state, and, where applicable, local civil rights laws banning discrimination in private institutions of higher education. The University will not discriminate against any employee, applicant for employment, student or applicant for admission on the basis of race, religion, color, sex, pregnancy or related conditions, 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 or its visitors and guests on the basis of their actual or perceived membership in the protected classes listed above is in violation of University policy. When brought to the attention of the University, any such discrimination will be appropriately remedied by the University according to the outlined policy and procedures.

### **Accommodation of Disabilities**

The University is committed to full compliance with the Americans With Disabilities Act Amendments Act of 2008 (ADAA) 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 ADAA, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity. The ADAA 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 ADAA/504 Coordinator and is responsible for coordinating efforts to comply with these disability laws, including investigation of any grievance alleging noncompliance.

### **Students with Disabilities**

The University is committed to complying with all provisions of the American Disabilities Act (ADAA) and state and local disability laws, as applicable. Consistent with the nondiscrimination statement, the University 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 University.

All accommodations are made on a case-by-case basis. The University 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.

### **Employees with Disabilities**

Pursuant to the ADAA, the University 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.

## **Important Definitions**

### **Academic Freedom**

The University'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.

### **Clergy Reporting**

Clergy reporting refers to the data collected by Marist Campus Safety on violent crimes (including sexual assault/rape, domestic violence, dating violence, and stalking) occurring on or near University property and compiled in the University's Annual Security Report. Only aggregate data is reported, and no personally identifiable information is collected. For more information, please visit the Marist Campus Safety website.

### **Code of Conduct**

The written policies adopted by the University governing student behavior, rights, and responsibilities while such student is matriculated at the University.

### **Institution**

Institution will mean "Marist University" or "University" in this Policy.

### **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 clergy are example of University employees who may offer confidentiality.

### **Privacy**

A University employee, except for confidential resources, cannot guarantee complete confidentiality, but the individual can guarantee privacy. Privacy means information is disclosed only to select officials who have an essential need to know to carry out their responsibilities. As is the case with any educational institution, the University must balance the needs of the individual student with its obligation to protect the safety and well-being of the community at large. Therefore, depending on the seriousness of the alleged incident, further action may be necessary, including a campus security alert. The alert, however, would never contain any information identifying the student who brought the complaint.

**Formal Complaint**

A signed, written request to the University that can be objectively understood as a request for the University to investigate and decide about alleged discrimination. A complaint submitted from a Marist University email account may be considered as a signed, formal request.

**Complainant**

The term “Complainant” will encompass the terms victim, survivor, complainant, reporting individual, claimant, or witness with victim status.

**Student**

A person who has gained admission to the institution. Admission means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

**Accused**

The term Accused shall mean a person accused of a violation who has not entered the University’s judicial or conduct process.

**Respondent**

The term, “Respondent” or responding party will mean a person accused of a violation who has entered the University’s judicial or conduct process.

**Witness**

In the context of this policy, “witness” is defined as a person who may have knowledge relating to allegations of a violation of this policy.

**Bystander**

A person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is a violation of rules or policies of an institution. A bystander does not become a reporting individual when they bring forth a report. They remain a bystander.

**Title IX Coordinator**

The individual who promotes the creation of policies, procedures and notifications designed to ensure compliance with Title IX, who oversees the implementation of compliance (grievance) procedures, including investigation and disposition of complaints, who answers questions and provides guidance about Title IX compliance and the University's related policies and procedures, who is a liaison to the state and federal agencies that enforce Title IX, who helps ensure the campus community and University employees are adequately trained and educated on Title IX compliance responsibilities, and who monitors all other aspects of the University's Title IX compliance.

**Title IX 2020 Final Rule**

In May of 2020, the U.S. Department of Education issued new regulations for Universities and universities that address sexual assault and other sexual misconduct. These regulations under the 2020 Final Rule cover certain specific forms of sexual misconduct. To comply with these regulations, Marist University has revised its existing policy for those types of misconduct. In



addition, the institution maintains its existing Sexual Misconduct Policy for other types of sexual misconduct that are not covered by the 2020 Final Rule. Both policies are important to creating and supporting a community that rejects all forms of sexual misconduct.

The 2020 Final Rule applies to sex discrimination that occurs in the institution's education program or activity and is in the United States.

### **Relevant**

Related to the allegations under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

### **Sexual Activity**

Shall have the meaning as "Sexual Contact" and Sexual Act:

- **Sexual Contact**

The intentional touching, either directly or through the clothing, genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

- **Sexual Act**

- A. Contact between the penis and the vulva or the penis and the anus, and for purpose of this subparagraph contact involving the penis occurs upon penetration, however slight;
- B. Contact between the mouth and penis, the mouth and vulva, the mouth, and anus.
- C. The penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with the intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
- D. The intentional touching, not through the clothing of the genitalia of another person who has not attained the age of 17 years with the intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

### **New York State's sexual harassment law definitions:**

- Gender identity: A person's actual or perceived gender-related identity
- Gender expression: A person's actual or perceived gender-related appearance, behavior, or other characteristic
- Sex: The sex assigned to a person at birth
- Cisgender: A gender identity that matches the sex assigned at birth
- Transgender: A gender identity that differs from the sex assigned at birth
- Non-binary: A gender identity that is neither exclusively male nor exclusively female.

## Sexual Misconduct Policy

### Prohibited Conduct

#### Sexual Harassment

The U.S. Department of Education’s Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of New York regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice. Marist University has adopted the following definition of sexual harassment to address the unique environment of an academic community as “gender-based” discrimination, which includes harassment or discrimination based on sex, sexual orientation, self-identified or perceived sex, gender identity, gender expression, or status of being transgender.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved. Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking.

For the purposes of this policy and any formal Title IX Grievance, “**Title IX covered sexual harassment**” includes any conduct on the basis of sex that satisfies one or more of the following: Conduct on the basis of sex or that is sexual that satisfies one or more of the following:

**1. Quid Pro Quo:**

- an employee of Marist University,
- conditions, implicitly or explicitly, the provision of an aid, benefit, or service of the recipient,
- on an individual’s participation in unwelcome sexual conduct.

**2. Sexual Harassment:**

- unwelcome conduct,
- determined by a reasonable person,
- to be so severe, and
- pervasive, and,
- objectively offensive,
- that it effectively denies a person equal access to Marist University’s education program or activity.<sup>1</sup>

<sup>1</sup> Unwelcome is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances (“in the shoes of the Complainant”), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

**3. Specific Offenses (Clery Act Crimes):**

**A. Sexual assault, as defined in the Clery Act as rape, fondling, incest, statutory rape includes:**

**Sex Offenses, Forcible:** Any sexual act<sup>2</sup> directed against another person, without the consent of the Complainant. “Sexual ” Act is defined under “important definitions” and

is specifically defined to include one or more of the following:

- a **Rape:** Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant.
- b **Sodomy:** Oral or anal sexual intercourse with another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age<sup>#</sup> or because of temporary or permanent mental or physical incapacity.
- c **Sexual Assault with an Object:** The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- d **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or temporary or permanent mental incapacity, for the purposes of sexual gratification.

**Sex Offenses, Non-forcible:** defined unlawful, non-forcible sexual intercourse:

- e. **Incest:** non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- f. **Statutory Rape:** non-forcible sexual intercourse with a person who is under the statutory age of consent of seventeen.

**B. Dating Violence,** Dating violence (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act), which includes any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; (iii) The frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

**C. Domestic Violence,** Domestic violence (as defined in the VAWA amendments to the Clery Act), which includes any felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under New York State domestic or family violence laws or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of New York. the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate

relationship.

- D. Stalking**, (as defined in the VAWA amendments to the Clery Act), meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress. For the purposes of this definition Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. A reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

### **Non-Title IX Covered Sexual Harassment (not under the scope of the 2020 Final Rule)**

When the above allegations are subject to the institution's disciplinary authority, including allegations that have been alleged to occur outside of the United States, but do not meet the threshold to qualify as Title IX covered sexual harassment under the **2020 Final Rule**, the University may re-categorize the complaint and proceed according to the procedures set forth in this Policy for non-Title IX covered sexual harassment.

In addition to the prohibited conduct as stated above, Marist University also prohibits the following offenses as forms of misconduct and discrimination when the act is based upon the Complainant's sex or gender including sexual orientation, gender identity and/ or gender expression.

- 1. Sexual Exploitation**, defined as: taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this policy.

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

- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
- Invasion of sexual privacy.
- Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of revenge pornography.
- Prostituting another person

- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the infection
  - Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
  - Stealthing – removing a condom during sexual intercourse without consent.
  - Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections
  - Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
  - Knowingly soliciting a minor for sexual activity
  - Engaging in sex trafficking
  - Creation, possession, or dissemination of child pornography
2. Threatening or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct based on sex, gender, or gender identity which threatens or endangers the health or safety of any person;
  3. **Intimidation**, defined as implied threats or acts that cause an unreasonable fear of harm in another person(s).
  4. **Hazing**, defined as: Acts likely to cause physical or psychological harm or social ostracism to any person within the University community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the prohibition of hazing found in the Student Code of Conduct), based on actual or perceived membership in a protected class. Hazing is also illegal under New York law and prohibited by the University policy.
  5. **Bullying**, defined as; Repeated and/or severe, aggressive behavior, and likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally. Bullying and cyber bullying is defined further in the prohibition of bullying found in the Student Code of Conduct
  6. **Grooming**, defined as: manipulative behaviors that the abuser uses to gain access to a potential victim, coerce them to agree to the abuse, and reduce the risk of being caught. While these tactics are used most often against younger kids, teens and adults are also at risk. Grooming can take place online or in-person.
  7. Any other University 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 University 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 in violation of this policy, including gender-based offenses of intimate partner or relationship (dating and/or domestic) violence, sexual assault, and stalking based on the facts and circumstances of the grievance.

## **Other Important Definitions and Terms Related to the Sexual Misconduct Policy**

### **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 they are 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.

The Respondent's intoxication does not relieve them of failing to realize a Complainant's incapacitation. The definition for incapacitation is set forth later in this policy.

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 they no longer want the act to continue, and, if that happens, the other person must stop immediately.

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

### **Coercion**

Unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain

consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

### **Force**

Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” “Okay, don’t hit me, I’ll do what you want.”). Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. Although resistance is not required or necessary, it is a clear demonstration of non-consent.

### **Retaliation**

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 (i.e. threats of violence outside of work hours) to constitute unlawful retaliation. Retaliation against an individual for alleging harassment, supporting a party or for assisting in providing information relevant to a claim of harassment is a serious violation of University policy. Acts of alleged retaliation involving employees may be reported to the Title IX Coordinator. Allegations of retaliation involving students may be reported to the Director of Student Conduct. The University 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 University policy and/or were unlawful. In turn, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.

### **Multi-Party Situations**

The University may consolidate Formal Complaints alleging Title IX covered sexual harassment or other sexual misconduct against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party (cross-complaints), where the allegations of Title IX covered sexual harassment or other sexual misconduct arise out of the same fact pattern or circumstances. The Title IX Coordinator may dismiss a cross-complaint filed in bad faith, meaning that they lack any reasonable basis and are intended to embarrass, harass, intimidate, or delay the other party, and can be found to be acting in retaliation against the reporting party and to have committed a violation of Title IX. Potential penalties for retaliatory actions include suspension or even expulsion.

### **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 their 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 Respondent knew or should have known of the Complainant's incapacitation based on objectively and reasonably apparent indications when viewed from the perspective of a sober, reasonable person in the Respondent'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 sexual misconduct.

### **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 University does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the University. 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 Prohibited Conduct Under The Sexual Misconduct Policy**

The University 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 University expects and relies on each member of the community to report actual or suspected violations of federal or state laws, violations of University policy or procedures, or other suspected wrongdoings.

The University encourages individuals who believe that they have experienced discrimination, harassment, or other prohibited conduct defined by this policy, to bring their concerns to the University'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 University's ability to investigate and respond, particularly if the subject remains in the University's jurisdiction. The University will take allegations of prohibited conduct seriously. All reports will be acted on promptly, and the University 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, may contact:

#### **Kelly Yough**

Director of Equity and Title IX Coordinator  
(845) 575-3799  
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.php?MaristUniversity&layout\\_id=40](https://cm.maxient.com/reportingform.php?MaristUniversity&layout_id=40)

Via mail at 3399 North Road, Title IX, Marist University, Poughkeepsie, NY 12601

Via hand delivery/campus mail to Office of Title IX; Marist University

**Anonymous complaints may be accepted and investigated; however, anonymity limits the University's ability to respond.** The Title IX grievance process requires a formal complaint. Email submissions from Marist email accounts are acceptable. The accused has the right to know the identity of the complainant/alleged victim.

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, Marist Campus Safety can receive reports at any time, as it is a 24hr/7 days per week operation. Emergency access to the Title IX Coordinator or other appropriately trained officials is provided by informing the Marist Campus Safety. When an individual makes a report to a University employee who is required to report the incident, the Title IX Coordinator and/or designee is notified, and the Title IX Office will respond to reported incidents.

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

### **Confidential Reporting**

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

#### On-Campus Resources

- Counseling Services: 845-575-3314
- Health Services: 845-575-3270
- Ordained Clergy (located in Campus Ministry): 845-575-3000 (x2275)

Counseling Services may be contacted after hours by calling Campus Safety at 845-575-2282 and asking for an on-call counselor. There is no need to leave your name. Just leave your phonenummer and the counselor will call you back. Campus counselors are available for students free of charge. These employees will submit anonymous statistical information for CleryAct purposes unless they believe it would be harmful to their client, patient or parishioner. Confidential employees can provide the Title IX Coordinator's information to the complainant as a resource.

- 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.

### **Non-Confidential Reporting**

Marist University employees who are not listed in the Confidential Reporting section of this Policy are required to report disclosures of alleged sex discrimination including sex-based harassment to Title IX Coordinator. This should be done as promptly as possible.

For all student disclosures of pregnancy and related conditions an employee should provide the student with the Title IX Coordinator and/or the Director of the Office of Accommodations and Accessibilities contact information and inform the student that these offices can help coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the education program or activity.

### **Student Alcohol and Drug Use Amnesty Policy When Reporting Sexual Misconduct**

The health and safety of every student at the University is of utmost importance. Marist University 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 University 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 University officials or law enforcement will not be subject to disciplinary action under the University'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**

The University takes all reports and complaints seriously and acts to resolve all reported incidents through these procedures. In cases where the reporting individual requests confidentiality and the circumstances allow the University to honor that request, the University 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 University will be unable to honor a request for confidentiality. Reporters and Complainants should be aware that University administrators may be required to 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 University will make every effort to ensure that the harmed individual's name and other identifying information are not disclosed, while still providing enough information for community members to make decisions regarding their safety. Any information about the resolution will not be released by the University until the conclusion of the

resolution process, as permitted or required by law.

When an investigation occurs, the process will still afford privacy to the parties, and only a small group of officials who need to know will be informed. Information will be shared as necessary with the parties, investigators, advisors, and witnesses. The circle of people with this knowledge will be kept as tight as possible to preserve parties' rights and privacy.

Any disclosure made during institutional research, classroom discussions or writing assignments or events, such as Take Back the Night or speak outs, is not considered notice to the University unless the individual alleging harm wishes a report to be made by contacting an individual required to report disclosures as outlined in this Policy. Such information will be used to inform campus climate and educational efforts, generally.

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

### **Grievance Procedure for Resolving Complaints Sexual Misconduct**

The process below is intended for complaints involving at least one student party; complaints of sex-discrimination involving only employees, may be referred to Human Resources or other appropriate University process.

The University will take measures deemed necessary to appropriately respond to all reports of sexual discrimination, including sex-based harassment. Not all forms of the prohibited conduct described will be deemed equally serious offenses, and the University reserves the right to impose different, yet appropriate measures, depending on the severity of the offense. The Complainant may choose to pursue an informal or formal resolution. Informal resolutions are offered at the discretion of the Title IX coordinator or designee.

When the University receives notice of alleged, prohibited conduct, the University will provide the reporting individual with written materials outlining their rights and options for support and resources available both on and off campus. An individual may report an incident to either the University or law enforcement, or both simultaneously. The University's process will run concurrently with the criminal justice process.

However, the filing of a complaint under this policy is independent of any criminal investigation or proceeding. The University 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 Complainant and the rest of the University community. The University, 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 University process will not exceed more than ten (10) business days unless there is a justified specific request by law enforcement to do so. Both parties will be notified if the University needs to delay its process.

There may also be times when the Title IX Office and/or another designated office such as the

Marist Campus Safety may contact the police regarding the nature of an alleged incident. Regardless, it is always the Complainant's decision as to whether to cooperate with any police and/or University investigation.

When the University receives notice, the Complainant 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 University can help to coordinate. The official will explain whether they can offer the reporting individual confidentiality and inform them of any other potential reporting options.

Complainants will be notified that Marist University offices and employees who cannot guarantee confidentiality will absolutely maintain 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.

### **Supportive Measures**

Supportive measures are individualized measures offered as appropriate, as reasonably available, and without unreasonably burdening a complainant or respondent; these measures are not for punishment or for disciplinary reasons and are available without fee or charge to the complainant and respondent. Parties have a right to access available supportive measures both on and off campus. Such measures are designed to restore or preserve equal access to the recipient's education program or activity, without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment.

These supportive measures 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. These services are available whether a University investigation and resolution by hearing or informal process is deemed warranted and pursued.

Parties may also seek additional modification or termination of a supportive measure applicable to them if circumstances change materially. Both parties can submit written evidence in support of their request to the Title IX Coordinator. The Title IX Coordinator, (or designee if the Title Coordinator implemented the supportive measures) will determine within a reasonable timeframe whether there will be any modification.

### **Emergency Removal of Student Respondents**

When the Title IX Coordinator or designee conducts an individualized safety and risk analysis and determines the existence of an imminent threat to the physical safety of any person, arising from sexual misconduct allegations, the University will take prompt action to remove from the

community, any student who has been alleged to have engaged in the alleged behavior. If the individualized safety and risk analysis determines that an immediate threat to the physical safety of any student, including the accused student, or other individual justifies removal, then the accused or respondent student will be removed. This is the case regardless of the severity of the allegations.

After determining an accused or respondent student is an immediate threat to the physical safety of an individual, which can include to him or herself, the Title IX Coordinator, or designee will provide written notice of the emergency removal to the accused or respondent student. This notice will contain: (1) the date the removal is set to begin, (2) the reason for the emergency removal, (3) the consequences of non-compliance, and (4) how to appeal the decision. In cases where a complaint has been filed by a complainant, the complainant will be notified as well.

During the Emergency Removal, the Respondent may be denied access to University housing and/or the University 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 University 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 Respondent student. If the Respondent identifies him/herself as a student having a disability, it is the responsibility of the respondent to notify the Title IX Coordinator upon receipt of the notice of Emergency Removal. The Title IX Coordinator or designee will then work with the Respondent and the Office of Accommodations and Accessibility to assist with the required and necessary accommodations for the period of the Emergency Removal. The Respondent and Complainant may request an immediate post-removal review of the need and terms of the removal, including potential modification, and will be allowed to submit information in support of their request. The accused or respondent student must provide written notice of the intent to appeal, which shall include the substance of the appeal, to the Vice President, Diversity, Equity, and Inclusion or designee, within (5) business days of receiving the notice of removal. The burden of proof is on the accused or respondent student to show that the removal decision was incorrect.

### **Interim Actions Regarding Employees**

Where the Respondent is an employee, existing provisions for interim action, including administrative leave, are applicable.

### **No Contact Orders**

After a complainant reports alleged sexual misconduct, the University may where necessary and/or requested and deemed necessary institute a no contact order between the Complainant and the Respondent. 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. No contact orders are typically mutual but may be one-way. Both parties will receive the directive in writing.

In one-way no-contact orders, if a Complainant and Respondent observe each other in the same place, it is the responsibility of the Respondent to leave the area immediately and without contacting the Complainant unless leaving the location restricts the Respondent's ability to

participate in an educational program or activity. 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 the full range of further disciplinary action, such as a charge of retaliation and violation of the no contact order.

### **Orders of Protection Issued by Criminal or Civil Courts**

Separate from a no contact order issued by the University, a Complainant can seek an order of protection from both the criminal or civil (family) court system. At the request of the Complainant, the Title IX Office will place the Complainant 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 Complainant and Respondent have the right to receive a copy of the order of protection when received by the University. Either the Title IX Coordinator, or designee, or an advocate from Family Services will be available to explain the order and answer any questions about it. If an order is violated, an individual may contact the Title IX Office or Marist Campus Safety to receive assistance in effecting an arrest.

Complainants will also receive informational materials about resources including intervention, mental health counseling, and medical services. The University will also provide information on advocacy services and resources available through Family Services. *Refer to Appendix B for the Family Services Center for Victim Safety and Support Resource Brochure.*

### **Advisors**

The Title IX Coordinator or designee will notify both the Complainant and Respondent of their right to use one advisor of their choice who can assist, support, and advise them during the grievance process. Complainants and Respondents are solely responsible for meeting advisors and ensuring advisors understand their role in the grievance process. The University can assist parties with finding an advisor as needed.

Advisors 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-complainant, or co-respondent. An advisor may not conduct an interview(s) or contact other parties, advisors, or witnesses during the University's investigation process. If an advisor's conduct is not consistent with these guidelines, the advisor may be excluded from the process. These limitations on the advisor's role do not prohibit a party from gathering and/or offering evidence on their own behalf during this process. The availability of an advisor to attend an interview, conduct meeting, or hearing will not interfere with or delay the proceedings. An advisor may not advocate on behalf of a party. All communication regarding the substance of an investigation, including but not limited to, scheduling meetings, must be communicated by the party.

A party is required to have an advisor for administrative hearings that are categorized under the 2020 Final Rule. If a party does not have an advisor, they must inform the Title IX Coordinator or designee at least five (5) business days prior to a scheduled hearing. During a hearing for allegations that fall under the 2020 Final Rule, the advisor is responsible for cross-examining the other party(ies) and witnesses; the Hearing Chair will establish the relevancy of each question in

real-time. Advisors are confined to conducting cross-exam and may not address the panel, investigator, or any other party(s) involved in the complaint outside of cross-examination.

During an administrative hearing for alleged prohibited conduct not categorized under the 2020 Final Rule, the parties involved in the complaint are responsible for their own questioning; questions are submitted to the Hearing Chair in advance of the hearing. Advisors are confined to serving as support for the person for whom they are advising and may not address the panel, investigator, or any other party(s) involved in the complaint.

### **Making a Formal Complaint**

While any individual may report alleged sexual harassment to the Title IX Office, a formal complaint may only be submitted by the individual alleging they have been subjected to sexual misconduct (the “Complainant”). A complaint is a **signed, written request** to the University that objectively can be understood as a request for the University to investigate and decide about alleged misconduct under the Harassment, Discrimination, and Sexual Misconduct Policy.

### **Who is considered a Complainant?**

A **complainant** is a student or employee who is alleged to have been subjected to conduct that could constitute sexual harassment under the Discrimination, Harassment, and Sexual Misconduct Policy. A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sexual harassment under this Policy and who was participating or attempting to participate in the University’s education program or activity at the time of the alleged discrimination could also be considered a complainant.

Regardless of the source of the report received, the Title IX Coordinator or designee may contact any person allegedly subjected to sex or gender-based harassment or discrimination to provide information regarding the supportive measures available to them under this policy and to determine whether they wish to initiate a formal complaint.

The Title IX Office cannot compel individuals to initiate a complaint for resolution under this procedure. However, in some instances, the Title IX Coordinator may initiate a complaint based on the information received if the individual allegedly harmed does not wish to file a complaint. Some circumstances may require a recipient (via the Title IX Coordinator) to initiate an investigation and adjudication of a complaint to protect the recipient’s educational community or otherwise avoid being deliberately indifferent to known sexual harassment. In these circumstances, the University does not become the complainant; the complainant need not participate in the process but will receive all notices issued under this Policy and Process.

**All complaints are subject to review.**

### **Initial Assessment**

Following receipt of notice or a complaint of an alleged violation of this Policy, the TitleIX Coordinator engages in an initial assessment, which is typically one to five business days in duration.

**The steps in an initial assessment can include:**



- The Title IX Coordinator will work with the Complainant to determine whether the complainant is aware of the right to an advisor, available resources, etc. and if they prefer:
  - Supportive measures only;
  - Informal resolution (if applicable) with or without supportive measures;
  - Formal resolution with or without supportive measures.
- If the Complainant prefers supportive measures, the Title IX Coordinator will work with the Complainant to identify their wishes and then seek to facilitate implementation.
- If the Complainant prefers an informal resolution option, the Title IX Coordinator will assess whether the complaint is suitable for informal resolution and whether the Respondent agrees to the process.
- If the complainant does not wish to initiate a complaint, the Title IX Coordinator will determine whether to initiate a complaint after a risk assessment indicates a compelling threat to the health and/or safety of an individual and/or the University community. *Please see Weighing Requests for Confidentiality.*
- If a Formal Grievance Process is preferred, and the conduct alleged falls within the scope of the Title IX Office, the Title IX Coordinator will initiate the formal investigation and grievance process. A complainant has the right to withdraw a formal complaint or withdraw participation in the process at any time. The formal grievance process below is intended for complaints involving at least one student party.

### **Dismissal & Reclassification of Formal Complaints**

Formal complaints alleging sex or gender-based misconduct will be reviewed and subject to possible dismissal and reclassification. Dismissal or reclassification by the Title IX Coordinator may occur before an investigation begins or after an investigation is complete.

### **Mandatory Dismissal**

**Formal Title IX complaints alleging sex or gender-based harassment must be dismissed under the 2020 Final Rule when:**

- The alleged conduct does not occur in a program or activity over which the University exercises substantial control; or
- The alleged conduct occurs outside of the United States; or
- The conduct alleged does not meet the definition of Title IX covered sexual harassment as set forth in this Policy.

However, even if certain allegations are subject to dismissal for purposes of a Title IX complaint under the 2020 Final Rule, the University may continue to process the allegations pursuant to the procedures set forth in this policy as **non-Title IX covered sexual harassment**, if the allegations, if true, would constitute prohibited sexual misconduct that falls within the institution's disciplinary authority.

**Discretionary Dismissal**

The University may dismiss a formal Title IX complaint or any allegations therein if, at any time during the investigation or hearing:

- The Complainant withdraws the complaint;
- The Respondent is no longer employed by or enrolled at Marist; or
- Specific circumstances prevent Marist from gathering evidence sufficient to reach a determination as to the conduct alleged.
- The identity of the complainant and/or alleged is unknown.

<sup>3</sup> If circumstances require, the Title IX Coordinator's supervisor will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

Parties will receive written notice of any dismissal, including instructions on how to appeal a dismissal decision or the next steps in the grievance process in cases where the dismissal is only for purposes of re-categorization. Complaints classified as Title IX covered sexual harassment allegations that are not dismissed (including those that are reinstated following an appeal of a dismissal) will be resolved under the procedures following the 2020 Final Rule. Allegations re-categorized as non-Title IX covered sexual harassment will follow the applicable procedures set forth in this policy for allegations not covered by the 2020 Final Rule.

**Weighing Requests for Confidentiality**

When a reporting individual discloses an incident to an institution employee who is responsible for responding to or reporting domestic violence, dating violence, stalking, or sexual assault but wishes to maintain confidentiality or does not consent to the institution's request to initiate an investigation, the Title IX Coordinator must weigh the request against the institution's obligation to provide a safe, non-discriminatory environment for all members of its community.

The University will seek to honor a reporting individual's request for no investigation, unless the institution determines in good faith that failure to investigate does not adequately mitigate a potential risk of harm to the reporting individual or other members of the community, through a weighing of the following factors (among others):

- Whether the accused has a history of violent behavior or is a repeat offender;
- Whether the incident represents escalation in unlawful conduct on behalf of the accused from previously noted behavior;
- Whether the accused used a weapon or force;
- Whether the institution possesses other means to obtain evidence such as security footage, and whether available information reveals a pattern of perpetration at a given location or by a particular group.

**Complaints classified as allegations under the Discrimination, Harassment, and Sexual Misconduct Policy and involving at least one student party that are not dismissed (including those that are reinstated following an appeal of a dismissal) will be resolved under the procedures set forth below.**

### **Informal Resolution**

Informal resolution is available only after a formal complaint has been filed and a Notice of Allegations has been sent, prior to a determination of responsibility, and if the complainant and respondent voluntarily consent to the process in writing. Informal resolution is not available in cases in which an employee is alleged to have sexually harassed a student except to resolve allegations that an employee engaged in sex discrimination. Informal resolution may involve agreement to pursue individual or community remedies, including targeted or broad-based educational programming or training; supported direct conversation or interaction with the respondent; mediation; indirect action by the Title IX Coordinator; and other forms of resolution that can be tailored to the needs of the parties.

With the voluntary consent of the parties, informal resolution may be used to agree upon disciplinary sanctions. Disciplinary action will only be imposed against a respondent where there is a sufficient factual foundation and both the complainant and the respondent have agreed to forego the additional procedures set forth in this school's policy and accept an agreed upon sanction. Any person who facilitates an informal resolution will be trained and free from conflicts of interest or bias for or against either party.

A party may not be required to participate in an informal resolution process. Informal resolution will not be a mechanism used to address reports of violence or coerced/forced behavior of any kind or if there is evidence of pattern of misconduct or a perceived threat of further harm to the community. Informal resolution processes are not a condition of enrollment/continued enrollment or employment/continued employment.

The University will provide the parties with a written notice of the requirements of the informal resolution process. Failure to abide by the accord can result in appropriate action. At any time during an informal resolution process prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the complaint.

### **Formal Resolution**

#### **Investigation of a Formal Complaint**

Title IX Coordinator or designee will facilitate the grievance process for complaints where at least one party is a student.

#### **Notice of Investigation**

When a complaint is filed, the Title IX Coordinator or designee will appoint a trained investigator(s). Parties to allegations will receive notification of investigation in writing; such notice will occur as soon as practicable, but no more than ten (10) days after the institution receives a complaint if there are no extenuating circumstances. The parties will be notified by their institutional email accounts if they are a student or employee. If a party is not affiliated with

the University, written communication will be delivered in one of the formats provided to the University by the party. Once mailed, emailed and/or received in-person, notice is presumptively delivered. The institution will provide sufficient time for the parties to review the Notice of Investigation and allegation before any initial interview; typically three to five business days.

**The Notice of Investigation will include the following information:**

- The identities of the parties involved, if known.
- The specific section of the policy allegedly violated with a hyperlink to the University's Discrimination, Harassment, and Sexual Misconduct Policy.
- The precise conduct allegedly constituting the potential violation; potential violations can be updated during the investigation process as new information is gathered.
- The date and location of the alleged incident(s), if known.
- Reiterate their right to bring an advisor of choice to their scheduled meetings.
- Whether the alleged conduct is categorized as Title IX covered sexual harassment following the procedures set forth under the 2020 Final Rule or will be processed as non-Title IX covered sexual harassment.
- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- A statement that the parties may inspect, and review evidence gathered during the investigation.
- Reiterate that Marist University policy prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
- The Notice of Allegations may be updated as new information is learned.

The Notice of Investigation will also include the names of the assigned investigator(s). If either party should object to the assigned investigator(s) at the time, they must raise all concerns, in writing, to the Title IX Coordinator or designee immediately. Investigators will only be removed if the Title IX Coordinator concludes that the objections raised preclude an impartial gathering of evidence. Additionally, any investigator who believes that they cannot conduct an objective investigation must recuse themselves from the proceedings when notified of the identity of the parties.

**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 University policy. It is the responsibility of the University's investigators to gather sufficient relevant evidence for the decision-makers to reach a fair and impartial determination as to whether a policy violation occurred. The investigation will include asking both the Complainant and Respondent for information, including names of factual witnesses they would like to be contacted regarding the allegations made. Character witnesses will not be interviewed during an investigation. Investigators will make all reasonable efforts to contact all relevant and material witnesses and parties but cannot guarantee that witnesses or parties will respond to requests for interviews or appear for any interview time.

scheduled.

Knowingly making false statements or knowingly providing false information during the grievance process is a serious violation of this Policy. Individuals who knowingly provide false information will be subject to discipline as outlined in the relevant handbook/code. Allegations of false information will be referred to the appropriate school official. In addition to interviews of parties and relevant witnesses, the investigation will include gathering of any relevant physical, documentary, or other evidence.

The investigators will conduct the investigation with sensitivity, respectful of privacy concerns of every individual, and in a manner appropriate to the circumstances of the case, and typically will include interviews with the Complainant(s) and Respondent(s) to present statements, witnesses, and other evidence. Prior to their interview, parties and witnesses may but are not required to submit a written statement to the assigned investigator(s).

Any evidence that is relevant and credible may be considered, including an individual's prior misconduct history as well as evidence indicating a pattern of misconduct. The process should exclude irrelevant or immaterial evidence and may disregard evidence lacking in credibility or that is improperly prejudicial.

Unless the Title IX Coordinator determines it is appropriate, the investigation does not consider: (1) incidents not directly related to the possible violation, unless they evidence a pattern; (2) the sexual history of the parties (though there may be a limited exception made to the regard of the sexual history between the parties); or (3) the character of the parties.

### **Audio & Video Recordings Prohibited**

Investigators will make no audio or video recording of any meeting and no audio or video recording (of any kind) of the meetings is permitted by either party without written consent from all parties, or as necessary for accommodation. The Title IX Coordinator in consultation with the ADA 504 Coordinator will grant accommodation as needed.

### **Standard of Evidence**

The University 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.

### **Investigation Timeline**

The University will conduct a fair, impartial, and prompt investigation in a manner that will provide all parties with a resolution. Fixed timelines for completion cannot be guaranteed and depending on the nature of the allegations involved, an investigation could require as many as ninety (90), if not more. Factors impacting this time frame, include but are not limited to, the complexity and nature of the conduct alleged, the number of parties and witnesses involved, reasonable delays in procedures for securing party advisors and required, reasonable accommodations, campus closures in the event of weather, weather-related conditions, and/or public health crisis. In all cases, the Title IX Coordinator or designee will provide both the Complainant and the Respondent with notice of any delays necessary as a function of separate

law enforcement procedures. Investigators gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report.

Each party may request a one-time delay in the Grievance Process of up to five (5) days for good cause (granted or denied in the sole judgment of the Title IX Coordinator, or designee) provided that the requestor provides reasonable notice, and the delay does not overly inconvenience other parties.

At the conclusion of the investigation, Investigators gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report. Prior to the conclusion of the investigation, investigators provide to the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the University does not intend to rely in reaching a determination, for review for ten (10) calendar days so that each party may meaningfully comment and respond to the evidence. The parties may elect to waive the full ten days. Each copy of the materials shared is confidential. Parties involved in the complaint are entitled to one, ten (10) calendar day review period of the investigative report. Investigators will review comments submitted and may incorporate them into the report. Investigators may respond to the comments submitted by parties in the report. Investigators submit the finalized report, including any revisions, to the Title IX Coordinator or designee who coordinates the implementation of the hearing. Parties who wish to comment on any new information that was added by the investigator to the final report may do so by submitting comments to the Title IX Coordinator prior to the scheduled hearing or at the hearing, if applicable.

Once the report is finalized, the Title IX Coordinator or designee will notify the parties of next steps in the grievance process. The outcome of the investigation determines whether an administrative hearing is necessary. The institution may initiate charges or may choose not to initiate charges when the evidence does not merit doing so. If the investigation concludes no violation occurred, notification will include the evidence gathered during the investigation that was used by the Title IX Coordinator to make this determination, and the relevant procedures and bases for any available appeal options. For allegations proceeding to an administrative hearing panel, notification will include the hearing notification letter as well as the evidence gathered during the investigation to be used by the administrative hearing panel to determine responsibility; the hearing notification letter and evidence to be used will be delivered to all parties involved in the complaint, ten (10) days prior to a scheduled hearing.

### **Administrative Hearing**

Hearings may be conducted with all parties physically present in the same geographic location, usually on campus, or, at the University's discretion or when required by law, any or all parties, witnesses, and other participants may choose to appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

**Composition of Administrative Hearing Panel**

The Title IX Coordinator or designee will appoint a Chair to the Hearing Panel along with one (1) to three (3) additional members, excluding the Chair. The Chair and panelists are trained faculty, staff, or contracted consultants not involved with the investigation or any prior decision-making or appeals related to this case. The Chair is not a voting member of the panel; the Chair is responsible for the administrative functions of the hearing, including scheduling a pre-conference meeting with each party prior to the hearing to go over the process.

**Notification of Charges and Hearing Date**

The Notification of Charges will include the following information:

- 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. 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 support of an advisor at the hearing. Parties may select whomever they wish to serve as their advisor, including attorneys. The advisor may not make a presentation or represent the Complainant or Respondent during the hearing.

The advisor may consult with their advisee party quietly or in writing, or outside the hearing during breaks, but may not speak on behalf of the advisee to the panel.

- For allegations involving non-title ix covered sexual harassment, the parties are responsible for submitting questions in advance of the hearing to the Chair. The Chair will determine if a question(s) is relevant and reserves the right to reword a question if needed. For allegations involving Title IX covered sexual harassment, questions will be asked in real time through the party's advisor; the Chair will establish relevancy for each question and reserves the right to reword a question if needed before the question is answered by the other party.
- Names of witnesses the University intends to call.
- Names of Hearing Panel Chair and member(s).

Hearings that occur after the end of an academic term may be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the University to remain within the 90-day goal for resolution.

**Hearing Procedures**

In addition to the Hearing Chair and Panel and the investigator(s) who conducted the investigation on the grievance, the Complainant(s) and Respondent(s), advisors to the parties, and any witnesses called to attend the hearing may participate. All institutional officials will be impartial and free of conflicts of interest throughout the resolution process.

**Panel Member Recusal or Objections**

Should either party object to any panelist, they must raise all concerns, in writing, to the Title IX Coordinator or designee within three (3) business days following the notice of hearing. Panel

members will only be unseated if the Title IX Coordinator or designee concludes that a bias precludes an impartial hearing of the grievance. Additionally, any panelist who feels they cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties and all witnesses in advance of the hearing. The non-bias and conflict of interest requirement does not apply to advisors.

### **Order of Hearing Presentations and Questioning**

Once the procedures are explained and the participants are introduced, the investigator(s) will present an overview of the investigation first and be subject to questioning by the parties and the Hearing Panel. The investigator(s) will then be excused. The Hearing Panel will then permit questioning of and by the parties, and of any present witness. All questions are subject to a relevance determination by the Chair.

For all complaints classified under the 2020 Final Rule, advisors are responsible for live cross-examination. Questions are subject to a relevancy determination by the Chair before the other party may answer. For complaints that are classified as outside the scope of the 2020 Final Rule, parties will submit questions in advance to the hearing to the Chair, who will establish relevancy. Questions deemed relevant will be asked at the hearing, by the Chair; follow-up questions will be permitted as applicable.

Effect of Failure to Appear at the Hearing or Failure to Participate in Questioning Witnesses and Parties: A hearing may proceed whether a party or witness appears at the time scheduled for the hearing.

If a party or witness chooses not to submit to questioning at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, the Hearing Panel members may consider statements made by parties or witnesses that are otherwise permitted under the regulations, even if those parties or witnesses do not participate in cross-examination at a hearing, in reaching a determination regarding responsibility in a grievance process.

### **Hearing Decorum**

The Chair may invite explanations or persuasive statements regarding relevance from the parties, if the Chair chooses. The Chair will then state their decision regarding the relevance of a question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance. The Chair may consult with legal counsel on any questions of admissibility. The Chair may ask parties to frame why a question is or is not relevant from their perspective but will not continue to entertain argument from the party on relevance once the Chair has ruled on a question.

No one will present information or raise questions of either the Complainant or Respondent concerning:



- Incidents not directly related to the allegation(s), unless they show a pattern,
- The prior sexual history of the Complainant with persons other than the other party in the process unless such information about the Complainant's prior sexual behavior is offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the information concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and is offered to prove consent,
- The character or medical or mental health diagnosis and/or treatment of either party, and/or
- Past findings of domestic violence, dating violence, stalking, sexual assault, or other policy violations may be admissible only for purposes of determining an appropriate sanction, if applicable.

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 to respond to specific questions from the panel or the parties involved. The panel does not hear from character witnesses.

In hearings involving more than one Respondent or in which two Complainants have accused the same individual of substantially similar conduct, the University will typically consider the allegations in a joint hearing; however, the Title IX Coordinator or designee may permit separate hearings at their discretion. In all cases involving more than one Respondent, separate determinations of responsibility will be made for each Respondent. Proceedings are private. All persons present at any time during the hearing are expected to maintain the privacy of the proceedings, subject to University consequences for failure to do so. Although the contents of the hearing are private, the parties have discretion to share their own experiences and should discuss doing so with their advisor. Hearings are recorded for purposes of inspection and review. Hearing Panel members, the parties and/or the persons who initiated the action and appropriate administrative officers of the University will be allowed to listen to the recording in a location determined by the Title IX Coordinator or designee. No person will be permitted to make a copy of the recording without the permission of the Title IX Coordinator or designee. The parties and/or the people who initiated the action confirm that they will protect the privacy of the information contained in the recording.

### **Hearing Panel Decision**

Upon completion of the hearing, the Hearing Panel will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the violation(s) in question. The Chair acts as a facilitator in the process, not a decision-maker. The panel will base its determination on a preponderance of the evidence (i.e., whether it is more likely than not that the Respondent committed each alleged violation). If Respondent is found responsible by a majority of the panel, the panel will impose appropriate sanctions. The Hearing Panel Chair will prepare a Notice of Determination to be signed-off by all Hearing Panel members and delivered to the Title IX Coordinator or designee following the hearing's completion.

### **Notice of Determination**

The Title IX Coordinator or designee will simultaneously inform the respondent and reporting party of the hearing panel's determination typically within ten (10) business days of the hearing.

Notifications will be made in writing and may be delivered through institutional email accounts if the parties are students or employees, and by other reasonable means if they are not.

The Notice of Determination will articulate the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by the University from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Determination will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the University is permitted to share such information under state or federal law; any sanctions issued which the University is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to the University's educational or employment program or activity, to the extent the University is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

The Notice of Determination will also include information on when the results are considered by the University to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

### **Sanctions**

Sanctions or remedies will be determined by the Hearing Panel if there is a finding of responsibility. Factors considered when determining a sanction/remedy 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/remedies to bring an end to the discrimination, harassment and/or retaliation
- The need for sanctions/remedies 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 Complainant and the community

### *Student Sanctions*

A complete list of student sanctions that may be imposed upon students singly or in combination can be found in Appendix D. **At any point in the process at which sanctions are to be imposed, the parties will have the right to submit a written impact statement to be considered before sanctions are determined. Impact Statements should be submitted to the Chair of the Hearing Panel prior to the start of the hearing.**

### *Employee Sanctions*

Responsive actions for an employee who has engaged in behaviors that violate this Policy and/or retaliation include:

- Warning – Verbal or Written
- Performance Improvement/Management Process
- Required Counseling
- Required Training or Education
- Probation
- Loss of Annual Pay Increase
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Suspension with pay
- Suspension without pay
- Termination

In addition to or in place of the above sanctions, the Recipient may assign any other sanctions as deemed appropriate.

### **Transcript Notation**

For crimes of violence, including, but not limited to sexual violence, defined as crimes that meet the reporting requirements pursuant to the federal Clery Act established in 20 U.S.C.

1092(f)(1)(F)(i)(I)-(VIII), Marist University shall make a notation on the transcript of students found responsible after a conduct process that they were "suspended after a finding of responsibility for a code of conduct violation" or "expelled after a finding of responsibility for a code of conduct violation." For any Respondent who withdraws from the institution while such conduct charges are pending, and declines to complete the disciplinary process, Marist University will make a notation on the transcript that they "withdrew with conduct charges pending."

Transcript notation guidelines are in place regardless of where or when the incident occurred.

Marist University permits a student seeking removal of a 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.

### **Respondent's Withdrawal or Resignation During Investigation or Hearing Process**

**Students:** If a student withdraws from the University and does not participate in the investigation and/or hearing, while such conduct charges are pending, and declines to complete the disciplinary process, Marist University will make a notation on the transcript that they "withdrew with conduct charges pending." If the student re-enrolls at the University, the investigation and/or hearing process will resume. If the process does proceed in the student's absence the student will not be permitted to return to University unless all sanctions have been satisfied.

**Employees:** If an employee resigns while charges are pending, the records of the Title IX Coordinator or designee will reflect that status, as will University 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

Complainant and the community. If an employee is dismissed due to a Title IX violation the University will advise future employment references.

### **Appeals**

Appeals of complaint dismissals or Hearing Panel determinations must be submitted in writing to the Title IX Coordinator or designee within five (5) business days of the delivery of the notice of dismissal or the written Notice of Determination.

The Title IX Coordinator or designee will appoint a Chair to an Appeal Panel composed of a total of three members, including the Chair, who may be members of faculty or staff, or contracted consultants who have not been previously involved with the investigation or any prior decision-making or appeals related to this specific case.

Any party may appeal. When any party requests an appeal, the other party (parties) will be notified, receive a copy of the appeal(s), and can join in the appeal. The Title IX Coordinator or designee will give reasonable time for the response.

A party must submit appeals on their own behalf in one of the following manners: in person; by mail; or by email from the party's University-issued email account. If a party is not affiliated with the University, written communication will be accepted from their personal email account. The University will not accept appeals submitted by anyone other than the party.

Appeals are limited to the following:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or
- The Title IX Coordinator, investigator(s), or Hearing Panel member(s), including the chair, had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

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 the appeals panel finds that at least one of the grounds to appeal 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 allegations. In most cases, appeals are confined to a review of the written documentation or record of the original dismissal or the

original hearing, and pertinent documentation regarding the grounds for appeal. Appeals granted based on new evidence should normally be remanded to the investigator(s) for reconsideration unless otherwise directed by the Title IX Coordinator or designee.

The appeal panel will generally render a written decision on the appeal, describing its rationale, and communicate it simultaneously to all parties within five (5) business days from hearing of the appeal. Once an appeal is decided, the outcome is final. Further appeals are not permitted.

The determination regarding responsibility (including the applicability of sanctions) becomes final either on the date that the University provides the parties with the written decision of the result of the appeal, or if an appeal is not requested, the date on which an appeal would no longer be considered timely.

### **Failure to Complete Sanctions/Comply with Remedies**

All responding parties are expected to comply with conduct sanctions/remedies within the time frame specified by the Title IX Coordinator or designee. Failure to follow through on conduct sanctions/remedies by the date specified, whether by refusal, neglect or any other reason, may result in additional sanctions/remedies and/or suspension, expulsion and/or termination from the University. 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, investigations, hearings, and outcomes will be kept by the Title IX Coordinator or designee for seven (7) years. All expulsions and terminations will be retained indefinitely on paper and/or in a database.

### **Legal Challenges**

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

### **Revision**

This Policy and procedures supersede any previous policy(ies) addressing harassment, sexual misconduct, discrimination, and/or retaliation under Title IX and will be reviewed and updated annually by the Title IX Coordinator. Marist University reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect. During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this Policy and procedures. If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings. This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally

### **Procedure for Resolving Other Civil Rights Offenses Unrelated to Sexual Misconduct**

The procedure set forth below applies to the resolution of alleged “other civil rights offenses” as defined in this policy when the alleged offense is unrelated to sex or gender and the Sexual Misconduct Policy does not apply.

Complaints of other civil rights offenses unrelated to sex or gender involving student Respondents will be resolved in accordance with procedures set forth in the Student Code of Conduct. Complaints of other civil rights offenses unrelated to sex or gender involving faculty, staff, or administrator Respondents will be resolved pursuant to the procedures set forth in this subsection.

All complaints of other civil rights offenses unrelated to sex or gender made against faculty-Respondents will be forwarded to the Associate Dean for Academic Affairs; complaints against employee-Respondents will be forwarded to the Vice President for Human Resources and/or the Director of Employee Relations (the “Designated Human Resources Official”). The Designated Human Resources Official or designee will review the complaint and determine whether the conduct as alleged amounts to a violation of this policy and will contact the Complainant to inform the Complainant of this determination no more than three (3) business days after receiving the complaint.

Where the alleged conduct does not amount to a policy violation, the Designated Human Resources Official or designee will close the complaint but may provide advice to department and/or individual employees involved. In cases where the alleged facts amount to a policy violation, the Designated Human Resources Official will explain the available resolution options to the Complainant. The University cannot compel a Complainant’s participation in any resolution process. Whether or not the Complainant wishes to participate in any process, the University reserves the right to address and end all conduct that presents an ongoing risk of harm.

Complainants who wish to participate in the resolution process may have their complaints resolved through an informal or formal process. Informal resolution will never be used to remedy any acts of violence.

#### **Informal Process (Conflict Resolution)**

The informal procedure, while not as structured as the formal process, can be an effective and appropriate means to address the Complainant’s allegations. Under the informal process, the Designated Human Resources Official does not reach a finding on the conduct alleged and does not impose sanctions. Instead, the Complainant may agree to the Designated Human Resources Official’s recommendations to resolve the allegations or request mediation with the Respondent to reach an agreed upon resolution. Mediation is only available when both parties agree to the process.

In cases where the Respondent does not wish to participate in mediation or the parties cannot reach an agreement, the Designated Human Resources Official will initiate an investigation.

**Formal Process (Investigation)**

In cases involving employee-Respondents, where mediation is unsuccessful or the formal process is otherwise deemed necessary by the University, the Designated Human Resources Official will investigate the alleged conduct. Both the Complainant and Respondent will receive written notice of the investigation, which will inform them of the following:

- Notify them of a formal investigation into the conduct alleged;
- 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 process

The Designated Human Resources Official will conduct the investigation in a manner appropriate to the circumstances of the case, and typically will include interviews with the Complainant and Respondent, 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 privacy concerns and with the aim of determining whether the facts support a finding that it is more likely than not the alleged misconduct occurred or did not occur. This is known as the preponderance of evidence standard.

The Designated Human Resources Official may determine administrative leave necessary prior to the completion of the investigation. In instances where a preponderance of evidence demonstrates the conduct occurred, the Designated Human Resources Official will work with the employee Respondent's supervisor and/or the Vice President of the affected area to determine appropriate sanctions.

The designated University official's determination is final.

## Appendix A

### **Marist University Athletics & NCAA “Policy to Combat Campus Sexual Violence”**

Marist University is committed to sexual violence prevention and compliance with the August 8, 2017 NCAA Board of Governors Policy on Campus Sexual Violence (available at: <http://www.ncaa.org/sport-science-institute/topics/ncaa-board-governors-policy-campus-sexual-violence>).

All incoming, continuing and transfer student-athletes, including graduate students, who expect to try out for or participate in intercollegiate athletics in one or more seasons of the upcoming academic year are required to complete an annual disclosure related to any conduct in which they have engaged that resulted in (1) discipline through a Title IX or other sexual misconduct proceeding or (2) a criminal conviction for sexual, interpersonal or other acts of violence. In addition, transfer student-athletes must disclose whether a Title IX proceeding was incomplete at the time of transfer, even if no discipline had been imposed as of the time of transfer. Failure to make a full and accurate disclosure could result in penalties, including loss of eligibility to participate in athletics as determined by Marist University. Further, it is the student-athlete’s responsibility to report any situation that would change their answers or add information in response to any question after signing the Marist University Student-Athlete Attestation form.

These disclosure requirements concern any discipline received through a Title IX proceeding or other sexual misconduct proceeding, or criminal conviction, regardless of the degree, and whether the result of a plea or court determination, of any of the following:

- **Interpersonal Violence:** Violence that predominantly arises out of an intimate relationship between the victim and the perpetrator, including dating and domestic violence.
- **Sexual Violence:** A term used to include both forcible and nonforcible sex offenses, including sexual battery, sexual assault, and rape (both non-consensual and statutory), as well as threats to commit Sexual Violence on another.
- **Other Acts of Violence:** Crimes including murder, manslaughter, aggravated assault or any assault that employs the use of a deadly weapon or causes serious bodily injury.

Marist University reserves the right to seek further inquiry into the information provided, to the extent permitted by applicable law.



## Appendix B

### About The Center for Victim Safety and Support

Family Services provides 24/7 support to victims of violence and other crimes with a person-centered approach that supports survivors' rights, dignity, healing, and self-determination. You are not alone, your safety is a priority, and you have options.

#### Help is available for:

- Domestic and Dating Violence
- Rape and Sexual Assault
- Emotional, Psychological, and/or Financial Abuse
- Isolation
- Stalking
- Assault and Physical Violence
- Threatening and Controlling Behavior
- Incest
- Sexual Abuse and Molestation
- Harassment
- Other crimes including but not limited to homicide, robbery, elder abuse, and human trafficking

#### All services are

Free • Accessible • Confidential

#### 24-Hour Hotlines

Rape Crisis & Crime Victims  
(845) 452-7272

Domestic Violence  
(845) 485-5550

#### Contact Us

29 North Hamilton Street  
Poughkeepsie, NY 12601

(845) 452-1110 ext. 3400  
TTY: (845) 790-5919  
Fax: (845) 452-7298

[www.familyservicesny.org](http://www.familyservicesny.org)



Founded in 1979, Family Services brings people together to find the support they need, improving their lives and communities, and building a stronger, safer Hudson Valley. Our program areas include Behavioral Health Centers, Victim Services, Family Programs, Youth Services, Community Safety, and Prevention, as well as the management of the Family Partnership Center.



Funded in part by:  
Dutchess County, United Way of the Dutchess-Orange Region, NYS Office of Victim Services, NYS Dept. of Criminal Justice Services, and NYS Dept. of Health

### Center for Victim Safety and Support

#### Victim Services

#### 24-Hour Hotlines

Rape Crisis & Crime Victims  
(845) 452-7272

Domestic Violence  
(845) 485-5550

We are for **hope**  
for **justice**  
for **empowerment**  
against **violence**



### What We Do

24-Hour Support Hotline  
Crisis Intervention  
Emotional Support  
Advocacy  
Individual and Group Counseling  
Information and Referrals

#### Advocacy

24-hour support to victims of violence, including safety planning, 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

Educational and therapeutic counseling to victims and secondary victims of violence and crimes. Provided in individual sessions and/or support groups.

#### Children Services

Individual therapy, therapeutic play, and direct services for children and adolescents who are victims or secondary victims/witnesses of violence or crime.

#### Community Outreach / Volunteer and Internship Opportunities

Educational presentations are available for community groups on various topics related to victimization, safety, providing support, and violence prevention. Volunteer and student field placement available for individuals who become certified through NYS Department of Health (training provided by Family Services).

*"I do not know what would have happened in my situation without the support and advocacy of (CVSS). The therapy was a life changer and settled most of my fears, flashbacks, and nightmares after the assault. Life has drastically 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 one think clearly."*

—Survivor of Domestic Violence

### As a Victim You Have the Right to Be:

- Informed by law enforcement about local services.
- Supported by an advocate throughout the criminal justice process.
- Protected from the suspect or suspect's family.
- Notified by the District Attorney about certain steps in your case.

For more information about your rights you can also contact:

NYS Office of Victim Services  
800-247-8035  
[ovs.ny.gov](http://ovs.ny.gov)

### All Services Are

Free • Accessible • Confidential



The Center for Victim Safety and Support serves people of all racial/cultural backgrounds, religions, sexual orientations (lesbian, gay, bisexual, heterosexual), gender identities (men, women, transgender people), abilities, citizenship status, and ages.

Services are available in Spanish.

## **Appendix C**

### **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 D

### Student Sanctions

One or more of following sanctions may be imposed upon any student Respondent for any single violation of this Policy:

- *Written Warning.* Written notice to the student that their 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 their actions are of a serious nature within the University 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 University 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 their actions are unacceptable within the University 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 University 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 University policy violations including failure to complete previously imposed sanctions or adhere to previously imposed conditions, restriction from University-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 University 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 University.* A definite period of observation and review.

If a student is again found responsible for any further University 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.* Separation from the University 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 University property and the student's presence at any University-sponsored activity or event is prohibited. This sanction may be enforced with a trespass action as necessary. Students suspended for disciplinary reasons are not entitled to any refund of tuition or residence fees.
- *Expulsion.* A permanent separation of the student from the University. The student is banned from University property and the student's presence at any University-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 restriction from hosting visitors and/or guests.
  - A restriction from being a visitor in or entering a specified Residence Facility.
  - Restriction from University-sponsored extracurricular activities both on and off campus (including Senior Week and Commencement).
  - Other restrictions, as approved by the Student Conduct Officer.
- *Substance Education Program.* An educational workshop, in person or online, addressing substance use 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 University 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 use 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:
  - Letters of apology/thank you
  - Essay or research paper on assigned topics
  - Disqualification from future housing selection process
  - Program presentations
- *Withholding Diploma.* The University 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 University reserves the right to revoke a degree awarded from the University for fraud, misrepresentation or other violation of University 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:
  - Those sanctions listed in above.
  - Suspension or Expulsion of Student Organization includes temporary or permanent loss of recognized status with the University.
  - 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 University 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.

## Appendix E

### **Marist University Guidance on Compliance with NSF Notification Requirements Regarding Findings of Sexual Harassment, Other Forms of Harassment, or Sexual Assault**

*This guidance document serves to inform Marist University constituents who seek grant awards for research, curriculum development, and other creative activities through the National Science Foundation of the organization's notification requirements provision for matters relating to discriminatory and harassing conduct. This notification requirement is meant to supplement, not supplant, any other active requirements set forth by the NSF to its grant awardees. This guidance document does not modify any of the University's policies and procedures for responding to and investigating claims of discriminatory and harassing conduct as set forth in its [Discrimination, Harassment, and Sexual Misconduct Policy](#).*

In 2018, in its commitment to fostering safe research and learning environments, the National Science Foundation instituted a term and condition entitled [Notification Requirements Regarding Findings of Sexual Harassment, Other Forms of Harassment, or Sexual Assault](#). Pursuant to this provision, Marist is required to provide notification to NSF (NSF Notification) whenever, an NSF funded Principal Investigator (PI) or co-PI:

- Is found Responsible for violating Marist University's Discrimination, Harassment, and Sexual Misconduct Policy;
- Is placed on administrative leave or receives administrative action relating to:
  - a violation of Marist University's Discrimination, Harassment, and Sexual Misconduct Policy; or
  - an investigation under Marist University's Discrimination, Harassment, and Sexual Misconduct Policy

The NSF Notification requirement applies only to new awards and any funding amendments made on or after the effective date of October 22, 2018.

The NSF Notification must be submitted by the Authorized Organizational Representative (AOR), using the [NSF's Organizational Notifications of Harassment Form](#), within ten business days from the date of the finding or the date that the PI or co-PI is placed on administrative leave or receives administrative action, whichever is later.

Marist University will follow the established policies and procedures set forth in its [Discrimination, Harassment, and Sexual Misconduct Policy](#) when responding to and investigating claims of discriminatory and harassing conduct. When such a claim involves any NSF funded Principal Investigator (PI) or co-PI the Director of Equity and Title IX Coordinator (in consultation with Associate Vice President for Academic Affairs, or other appropriate senior officer/designee) will provide the AOR with the necessary information to fulfill this notification requirement.

Marist is *not permitted* to unilaterally remove an NSF funded PI/co-PI from this role without prior NSF approval. Upon receipt of the NSF Notification, NSF's Office of Diversity and Inclusion (ODI) will verify that Marist has submitted it, review the information provided, and consult with the AOR or designee to determine what, if any, action is appropriate. If it is determined that substitution or removal of the PI/co-PI is necessary, Marist must follow those processes and procedures set forth in the NSF Proposal and Award Policies and Procedures Guide, Chapter VII.B.

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*For external inquiries or to file a complaint regarding the enforcement of Title IX among NSF awardees please feel free to contact:*

**The National Science Foundation's Office of Equity and Civil Rights (OECR)**  
(703) 292-8020  
programcomplaints@nsf.gov

*It is appropriate to contact NSF if you have a complaint or concern that involves an NSF operated program or an NSF grant recipient institution. You may also contact NSF if you have questions about your rights or NSF policies. Individuals who feel they have been discriminated against in programs, services, activities or persons that are funded by NSF on the basis of race, color, national origin, sex, disability or age may file a complaint with NSF. Individuals may also file a complaint with NSF if there is retaliation for filing a complaint or participating in a complaint investigation.<sup>i</sup>*

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<sup>i</sup> For additional guidance please see: <https://www.govinfo.gov/content/pkg/FR-2018-09-21/pdf/2018-20574.pdf>;  
[https://www.nsf.gov/od/oecr/docs/Sexual\\_Harassment\\_FAQs.pdf](https://www.nsf.gov/od/oecr/docs/Sexual_Harassment_FAQs.pdf);  
[https://www.nsf.gov/od/oecr/awardee\\_civil\\_rights/titleix\\_faqs.jsp](https://www.nsf.gov/od/oecr/awardee_civil_rights/titleix_faqs.jsp)