



<b>Policy Name:</b>	Policy on Sexual Misconduct		
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**MERCY COLLEGE**  
**POLICY ON SEXUAL MISCONDUCT**

**TABLE OF CONTENTS**

I. <u>POLICY STATEMENT</u>	3
II. <u>PROHIBITED CONDUCT AND DEFINITIONS</u>	4
A. Sexual Harassment and Sexual Violence	4
B. Definitions	4
C. Retaliation	9
III. <u>APPLICABILITY</u>	9
IV. <u>TITLE IX COORDINATOR</u>	9
V. <u>RESOURCES AND INFORMATION FOR INDIVIDUALS AFFECTED BY SEXUAL MISCONDUCT</u>	10
A. Reporting to Law Enforcement	10
B. Mercy's Process When Cases are Reported to Outside Law Enforcement	11
C. Obtaining Immediate Medical Attention and Emotional Support	11
VI. <u>IMPORTANT INFORMATION ABOUT REPORTING AND CONFIDENTIALITY OBLIGATIONS OF MERCY EMPLOYEES</u>	12
A. Confidential Employees	12
B. Responsible Employees	13
C. Special Rules Concerning Public Awareness and Advocacy Events	14
VII. <u>REPORTING SEXUAL MISCONDUCT AT MERCY COLLEGE</u>	14
A. Complainant's Rights	14
B. Where to Report Allegations of Sexual Misconduct on Campus	15
C. Request that the College Maintain a Complainant's Anonymity or Not Conduct an Investigation	16
D. Filing External Complaints	17
E. Reporting and Other Actions by Bystanders	17
F. Reporting Retaliation	17
G. Amnesty for Alcohol and/or Drug Use	18
H. Coordination with Outside Law Enforcement Authorities	18
I. Timing	18
J. False and Malicious Allegations	18
VIII. <u>SUPPORTIVE MEASURES AND ACCOMMODATIONS</u>	19
A. Range of Supportive Measures and Accommodations	19
B. No Contact Orders	20
C. Emergency Removal	20
D. Process for Review of Supportive Measures and Accommodations, Including No Contact Orders and Emergency Removal	20

<b>IX. <u>EVALUATION OF INITIAL ALLEGATIONS OF SEXUAL MISCONDUCT</u></b>	<b>21</b>
<b>X. <u>RIGHTS AND PROCEDURES THAT APPLY TO ALL SEXUAL MISCONDUCT MATTERS</u></b>	<b>21</b>
A. Rights of Parties During any Investigation and Resolution	21
B. Informal Resolution	23
C. Title IX Sexual Harassment Grievance	24
D. Appeals for Title IX Sexual Harassment and Non-Title IX Sexual Misconduct	24
E. Conflict/Bias	25
F. Hearing Recording	25
G. Student Respondent Withdrawal Before Allegations are Resolved	26
H. Transcript Notations	26
I. Recordkeeping	26
<b>XI. <u>PROCEDURES FOR TITLE IX SEXUAL HARASSMENT MATTERS</u></b>	<b>27</b>
A. Requirement of a Title IX Formal Complaint	27
B. Initiation of Title IX Grievance Procedure	27
C. Informal Resolution	28
D. Dismissal of Title IX Formal Complaint Prior to Resolution	28
E. Appeal of Dismissal of a Title IX Formal Complaint	29
F. Formal Resolution and Investigation	29
G. Live Hearing	32
H. Hearing Procedures	34
<b>XII. <u>PROCEDURES FOR NON-TITLE IX SEXUAL MISCONDUCT MATTERS</u></b>	<b>38</b>
A. Rights of the Parties	38
B. Informal Resolution	38
C. Investigation and Findings	38
D. Action Following the Termination of an Investigation	39
E. Disciplinary Process and Procedures	41
<b>XIII. <u>COLLEGE OBLIGATIONS UNDER THIS POLICY</u></b>	<b>42</b>
A. Dissemination of Policies, Procedures, and Notices	42
B. Training and Educational Programming	42
<b>XIV. <u>RULES REGARDING INTIMATE RELATIONSHIPS BETWEEN EMPLOYEES AND STUDENTS</u></b>	<b>44</b>
A. Relationships Between Faculty or Employees and Students	44
B. Relationships Between Supervisors and Employees	44
<b>XV. <u>IMPLEMENTATION</u></b>	<b>45</b>
<b>APPENDIX A: <u>MERCY COLLEGE STUDENT BILL OF RIGHTS</u></b>	<b>46</b>
<b>APPENDIX B: <u>MERCY COLLEGE TITLE IX RESOURCE LIST</u></b>	<b>47</b>
<b>APPENDIX C: <u>DECORUM POLICY FOR TITLE IX HEARINGS</u></b>	<b>51</b>

## **I. POLICY STATEMENT**

Every member of the Mercy College community, including students and employees, deserve the opportunity to live, learn and work free from sexual harassment and sexual violence.

Accordingly, Mercy is committed to:

- Defining conduct that constitutes prohibited sexual harassment and sexual violence under the relevant laws and regulations, including federal Title IX, New York State Education Law Article 129B, and New York State Human Rights Law;
- Providing clear guidelines for students and employees on how to report incidents of sexual harassment and sexual violence and a commitment that a complainants' privacy will be maintained to the greatest extent possible;
- Promptly and accurately responding to and investigating allegations of sexual harassment and sexual violence under a predictable, fair grievance process that provides due process protections to alleged victims and alleged perpetrators of sexual harassment and sexual violence, and effectively implementing remedies for victims;
- Referring incidents to law enforcement and for disciplinary action when appropriate, and acting to investigate and address any allegations of retaliation;
- Providing ongoing assistance and supportive measures to students and employees who are involved in complaints of sexual harassment and sexual violence, including both complainants and respondents, such as providing information regarding where and how to obtain supportive services both on and off-campus, as well as their rights under federal law, state law and Mercy policy, including filing a complaint with the College as well as with external agencies;
- Providing awareness and prevention information on sexual harassment and sexual violence, and widely disseminating this policy, as well as the Mercy College Student Bill of Rights, disseminating information on resources available both on campus and locally, and implementing training and educational programs on sexual harassment and sexual violence to all College constituencies; and
- Gathering and analyzing information and data that will be reviewed in order to improve safety, reporting, responsiveness and the resolution of incidents at Mercy College.

Throughout this Policy, rights afforded and responses by the College will vary depending on whether the complainant is a student or employee, and whether conduct falls under the federal Title IX law and regulations and if not, then under which other federal, state laws and local laws relating to sexual harassment and sexual violence, including but not limited to: Title VII of the Civil Rights Act, Article 129A and 129B of the New York State Education Law, or the New York State, New York City and Westchester County Human Rights Laws. The College will make every

effort to make clear the policies as it pertains to each area, but in the event of confusion, please contact Mercy's Title IX Coordinator for clarification.

## **II. PROHIBITED CONDUCT AND DEFINITIONS**

### **A. Sexual Harassment and Sexual Violence**

This Policy prohibits sexual harassment and sexual violence (together and hereinafter referred to as "Sexual Misconduct") against Mercy College students, employees and others as set forth in Section III below.

### **B. Definitions**

The following behaviors constitute Sexual Misconduct prohibited under this Policy:

1. **Dating Violence** is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. Dating violence can be a single act or a pattern of behavior, based on the frequency, nature, and severity of the conduct. Dating violence includes the threat of sexual assault or physical abuse. The existence of such a relationship is determined based on a consideration of the following factors: (1) The length of the relationship; (2) The type of relationship and (3) The frequency of interaction between the persons involved in the relationship. A relationship may be romantic or intimate regardless of whether the relationship was sexual in nature.
2. **Domestic Violence** includes 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, 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 applicable 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 applicable domestic or family violence laws. Domestic violence can be a single act or a pattern of behavior, based on the frequency, nature, and severity of the conduct.
3. **Sexual Assault: Contact** is any sexual contact, including sexual touching for the purpose of sexual gratification of either party or degrading or abusing such person, without a person's consent. Sexual touching includes contact under or over clothing with another person's anus, breasts, buttocks, genitals, groin or inner thigh; touching another person anywhere with any of these body parts; making another person touch any of these body parts under or over clothing; or the emission of ejaculate on the clothing or body of another person.
4. **Sexual Assault: Penetration** is any form of vaginal, anal, or oral penetration or attempted penetration, however slight, by a penis, object, tongue, or finger without a person's consent. This term includes incest and statutory rape.

5. **Sexual Harassment** is unwelcome verbal or physical behavior based on a person's sex (including sexual orientation, gender, gender expression and gender identity, including transgender status). Conduct is considered "unwelcome" if the individual did not request or invite it and considered the conduct to be undesirable or offensive. This includes unwelcome conduct when: (1) a Mercy employee conditions the provision of an aid, benefit, or service of Mercy on an individual's participation in unwelcome sexual conduct (quid pro quo); and/or (2) such conduct alters the conditions of, or has the effect of interfering with, an individual's educational or work experience by creating an intimidating, hostile or offensive environment (hostile environment). The effect will be evaluated based on the perspective of a reasonable person in the position of a complainant.

While it is not possible to list all circumstances that might constitute Sexual Harassment, the following are some examples of conduct that might constitute such harassment:

- a. Suggestive body language or inappropriate or unwelcome physical contact that does not qualify as Sexual Assault;
- b. Verbal abuse or offensive comments of a sexual nature, including sexual slurs, persistent or pervasive sexually explicit statements, questions, jokes or anecdotes, degrading words regarding sexuality or gender, suggestive or obscene letters, notes, or invitations;
- c. Making lewd or sexual comments about an individual's appearance, body, or clothing;
- d. Visual displays or distribution of sexually explicit drawings, pictures, or written materials;
- e. Displaying nudity or engaging in sexual relations in spaces that can be seen by others;
- f. Undue and unwanted attention, such as repeated inappropriate flirting, staring, or making sexually suggestive gestures; or
- g. Offensive comments regarding a person's sexual orientation, gender identity or gender expression, such as persistent mocking or disparagement of a person based on a perceived lack of stereotypical masculinity or femininity.

Further, under New York State Law for Mercy College employees, harassment (including sexual harassment) is against the law whenever an individual is subjected to inferior terms, conditions or privileges of employment. The harassment need not be severe or pervasive in order for the College to be liable, although the actions are defensible if they are not more than "petty slights or trivial inconveniences."

6. **Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for their safety or the safety of others or (2) suffer substantial emotional distress. This Policy addresses stalking that is based on sex (including sexual orientation, gender, gender expression and gender identity, including transgender status). All other stalking will be addressed under other applicable policies.
7. **Title IX Sexual Harassment** is a subset of the broader definition of Sexual Harassment above. It is defined by the USDOE to mean conduct on the basis of sex that occurs in

Mercy's education program or activity against a person in the United States and that satisfies one or more of the following: (1) a Mercy employee conditioning the provision of an aid, benefit, or service of Mercy on an individual's participation in unwelcome sexual conduct; (2) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Mercy's education program or activity; or (3) Sexual Assault, Dating Violence, Domestic Violence, or Stalking as defined in this Policy.

8. **Voyeurism** is unlawful surveillance and includes acts that violate a person's right to privacy in connection with their body and/or sexual activity such as:
  - a. Viewing another person's sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's consent.
  - b. Recording images (e.g. video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness where that person would have a reasonable expectation of privacy, without that person's consent;
  - c. Disseminating images (e.g. video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness where that person would have a reasonable expectation of privacy, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to such disclosure; or
  - d. Using or installing, or permitting the use or installation of a device for the purpose of recording another person's sexual activity, intimate body parts or nakedness in a place where the person would have a reasonable expectation of privacy without that person's consent.

Other important terms and concepts addressed in this Policy:

1. **Consent** means affirmative consent.
2. **Affirmative Consent** is a 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 the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity or gender expression.
  - a. Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
  - b. In order to give consent, one must be of legal age (17 years or older in New York).
  - c. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
  - d. Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation maybe caused by lack of consciousness or being asleep, being

involuntarily restrained, or if the individual otherwise cannot 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.

- e. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- f. Consent may be initially given but withdrawn at any time. When consent is withdrawn or can no longer be given, sexual activity must stop.

### 3. Sexual Act/Sexual Activity is

- a. Any form of vaginal, anal, or oral penetration or attempted penetration, however slight, by a penis, object, tongue or finger.
  - b. Any sexual contact, including sexual touching. Sexual touching includes contact under or over clothing with another person's anus, breasts, buttocks, genitals, groin or inner thigh; touching another person anywhere with any of these body parts; making another person touch any of these body parts under or over clothing; or the emission of ejaculate on the clothing or body of another person.
4. **Complainant** refers to the individual who alleges that they have been the subject of Sexual Misconduct, and may be a Mercy student, employee (including all full-time and part-time faculty and staff and paid/unpaid interns) or visitor. Under this Policy, the alleged incident(s) may have been brought to the College's attention by someone other than the complainant.
5. **Confidentiality** is the commitment not to share any identifying information with others, except as required by law in emergency circumstances (such as risk of death or serious bodily harm). Confidentiality may only be offered by individuals who are not required to report known incidents of Sexual Misconduct to college officials. Licensed mental health counselors, medical providers and pastoral counselors may offer confidentiality. See additional discussion in Section VI.
6. **Day.** Whenever this Policy refers to a "day," it means a calendar day other than a Saturday, Sunday or federal or state holiday.
7. **Education program or activity** includes locations, events, or circumstances over which the College exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the College.
8. **Knowingly submitting false statements or information** means knowingly making false statements or submitting false information in connection with any allegation of Sexual Misconduct (as opposed to providing information which, even if erroneous, is provided in good faith). Anyone who knowingly makes false statements or submits false information in connection with any allegation of Sexual Misconduct will be subject to disciplinary

action in accordance with Mercy policies, handbooks and collective bargaining agreements.

9. **Non-Title IX Sexual Misconduct Matter** is the term used to describe allegations of Sexual Misconduct that does not meet the definition of Title IX Sexual Harassment and therefore will be resolved, investigated and adjudicated pursuant to the procedures outlined in Section XII.
10. **Party** is a Complainant or Respondent.
11. **Preponderance of evidence** is the standard of evidence used during the investigation and adjudication of Sexual Misconduct allegations under this Policy. A preponderance of the evidence means whether it is more likely than not that the Sexual Misconduct occurred.
12. **Privacy** is the assurance that an individual or the College will only reveal information about allegations of Sexual Misconduct to those who need to know the information in order to carry out their duties or responsibilities or as otherwise required by law. Individuals who are unable to offer the higher standard of confidentiality under law, but who are still committed to not disclose information more than necessary, may offer privacy. See additional discussion in Section VI.
13. **Respondent** refers to the individual who is alleged to have committed Sexual Misconduct against a Mercy student, employee, or visitor.
14. **Retaliation** is adverse treatment of an individual as a result of that individual's reporting Sexual Misconduct, assisting someone to report Sexual Misconduct, opposing in a reasonable manner an act or policy believed to constitute Sexual Misconduct, or participating in any manner (or refusing to participate) in an investigation or resolution under this Policy. Adverse treatment includes intimidation, threats, coercion or discrimination for the purpose of interfering with any right or privilege secured by this Policy. All individuals are prohibited from engaging in retaliation, including complainants, respondents and others, such as friends or relatives of the parties.
15. **Title IX Formal Complaint** is a document filed by a complainant or signed by the Title IX Coordinator alleging Title IX Sexual Harassment against a respondent and requesting that the college investigate the allegations. The Title IX Coordinator may sign a Title IX Formal Complaint with or without a complainant's desire to participate in a grievance process.
16. **Title IX Sexual Harassment Matter** is the term used to describe allegations of Sexual Misconduct that meet the definition of Title IX Sexual Harassment and therefore must be resolved, investigated and adjudicated pursuant to the Title IX grievance procedures required by the USDOE and outlined in Section XI.
17. **Visitor** is any person other than a Mercy student or employee who interacts with the Mercy community. Mercy alumni are considered visitors under this Policy.

- 18. Writing.** Whenever this Policy requires a “writing,” electronic mail satisfies the writing requirement.

### **C. Retaliation**

The College prohibits retaliation against any person who reports Sexual Misconduct, assists someone making such a report, or participates in any manner in an investigation, hearing or resolution of a complaint under this Policy, including respondents and their witnesses.

### **III. APPLICABILITY**

- A. Students and Employees.** This Policy applies to **all students and employees**, including all full-time and part-time faculty and staff at all of Mercy College’s campuses and locations.
- B. Other Community Members.** This Policy also applies to other members of the College community, including but not limited to **student applicants for admission, applicants for employment, contractors, vendors and visitors**. If other community members engage in behavior prohibited under this Policy or are subjected to behavior prohibited under this Policy at a Mercy College location, the College will take appropriate action, including immediate removal from the campus/location.
- C. This Policy applies regardless of an individual’s race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction when sexual misconduct occurs in the College’s educational programs or activities, against a person in the United States.
- D. While this Policy applies to prohibited sexual harassment and sexual violence, the College’s [Policy on Equal Opportunity and Non-Discrimination](#) (“*Non-Discrimination Policy*”) addresses all *other* forms of prohibited discrimination, including sex-based discrimination. Complaints under the College’s *Non-Discrimination Policy* can be made by students, employees and other community members here: [Discrimination Complaint Form](#).

### **IV. TITLE IX COORDINATOR**

Mercy College has designated an employee as the “Title IX Coordinator.” This employee is responsible for compliance with Title IX of the Education Amendments of 1972, which prohibits sex discrimination in education programs, as well as enforcing federal Title VII, New York State’s sexual harassment laws, and New York Education Laws 129A and 129B. Contact information for the Title IX Coordinator can be found at: <https://www.mercy.edu/about/title-ix>

The Title IX Coordinator has overall responsibility for implementing this Policy, including but not limited to:

- A. Ensuring their contact information is provided to applicants for admission and employment, including name, title, office address, e-mail address, and telephone number of the Title IX Coordinator, and that this information is prominently displayed on the College website;
- B. Receiving all complaints that are not strictly confidential, including providing emergency access in the first instance of disclosure by an individual reporting under this Policy;
- C. Overseeing the investigation of complaints;
- D. Ensuring all persons involved in a complaint are advised of their rights, in writing, under state and federal laws, and this Policy;
- E. Ensuring investigations are handled in a prompt and thorough manner, maintaining confidentiality when requested and where appropriate, and offering privacy for all persons involved to the greatest extent possible;
- F. Keeping the College President and other appropriate senior administrators informed of ongoing investigations, including findings of misconduct and penalties to be imposed under this Policy;
- G. Ensuring appropriate student education and employee training, including for Responsible Employees (defined below), Hearing Officer(s), Appeals Panel members, advisors and individuals facilitating informal resolution, is conducted;
- H. Ensuring a campus climate assessment is conducted in accordance with relevant law; and
- I. Ensuring the College's compliance with federal and state reporting obligations.

**V. RESOURCES AND INFORMATION FOR INDIVIDUALS AFFECTED BY SEXUAL MISCONDUCT**

Mercy is committed to providing assistance, support and resources to those affected by Sexual Misconduct. This Section discusses a complainant's option of reporting Sexual Misconduct to outside law enforcement, the differences between Mercy's process and procedures and those of outside law enforcement, and how to obtain immediate medical attention and emotional support.

**A. Reporting to Law Enforcement**

Students, employees and other community members are strongly encouraged to report sexual violence that occurred on or off-campus to local law enforcement and/or state police ("outside law enforcement"). Mercy does not require that a complainant report sexual violence to outside law enforcement; nor will Mercy do so without the complainant's agreement, except in exceptional circumstances. The College may report sexual violence to outside law enforcement without the complainant's consent when the College determines that the respondent poses a serious continuing threat to the physical safety of the complainant or another person.

If a student or employee chooses to report sexual violence to outside law enforcement, Mercy will provide assistance. The College shall have an appropriately trained employee available at all times to provide the complainant with information regarding options to proceed, including information regarding the criminal justice process and the preservation of evidence. Campus Safety officers can also assist the complainant with filing a complaint both on and off-campus, and in obtaining immediate medical attention and other services.

## **B. Mercy's Process When Cases are Reported to Outside Law Enforcement**

In cases where the complainant reports allegations to outside law enforcement authorities as well as to the College, the College must determine what actions to take based on its own investigation. The College may coordinate with outside law enforcement authorities in order to avoid interfering with their activities and, where possible, to obtain information regarding their investigation. Neither a law enforcement determination whether to prosecute a respondent, nor the outcome of any criminal prosecution, is dispositive of whether the respondent has committed a violation of this Policy.

Students, employees and other community members should be aware that Mercy procedures and standards differ from those of criminal law. When Mercy investigates allegations of Sexual Misconduct or brings disciplinary proceedings for violations of this Policy, the issue is whether the respondent violated Mercy policy. The standard applied in making this determination is whether the preponderance of the evidence supports a finding of responsibility (or whether it is more likely than not that the alleged conduct occurred). An individual found to have violated this Policy may be sanctioned by the College. In the criminal justice system, on the other hand, the issue is whether the accused violated criminal law. The standard applied is proof beyond a reasonable doubt and an individual found guilty of a crime is subject to criminal penalties, such as incarceration, probation and fines.

## **C. Obtaining Immediate Medical Attention and Emotional Support**

Mercy College is committed to assisting anyone who experiences sexual violence to seek comprehensive medical attention as soon as possible to treat injuries, obtain preventative treatment for sexually transmitted diseases, and preserve evidence, among other things. For rapes in particular, immediate treatment and the preservation of evidence (i.e. retain the clothing worn during the attack, do not shower, retain text messages, etc.) of the incident are crucial for many reasons, including facilitating an investigation if the complainant decides to file a criminal complaint. In addition, individuals who have experienced or witnessed sexual violence are encouraged to seek emotional support as soon as possible.

On-campus resources, at no cost to students, include a nurse/nurse practitioner and registered nurses at the Dobbs Ferry campus and licensed mental health counselors through the Health and Wellness Center. Please visit the College's website at: <https://www.mercy.edu/student-affairs/health-wellness-center> for more information about obtaining assistance.

A list of local off-campus resources can be found in Appendix B of this Policy and on the Mercy College website at <https://www.mercy.edu/about/title-ix>, which includes rape crisis centers, anonymous and confidential reporting hotlines, mental health counseling, victim advocacy services, legal assistance, and visa immigration services available throughout Westchester County and New York City. This list also includes a designation of which local hospitals are designated as SAFE (Sexual Assault Forensic Examination) hospitals, which are specially equipped to handle rapes, including the gathering of evidence. These services are available to both students and employees.

## **VI. IMPORTANT INFORMATION ABOUT REPORTING AND CONFIDENTIALITY OBLIGATIONS OF MERCY EMPLOYEES**

Mercy values the privacy of its students and employees and recognizes that they should be able to seek the assistance they need without fear that the information they provide will be shared more broadly. An individual who speaks to a College employee about Sexual Misconduct should be aware that employees fall into three categories:

- **Confidential Employees** have an obligation to maintain a complainant's confidentiality regarding allegations of Sexual Misconduct and will not share any identifying information with others, except as required by law in emergency circumstances;
- **Responsible Employees** are required to report allegations of Sexual Misconduct to the Title IX Coordinator but will protect an individual's privacy to the greatest extent possible and share information with other staff only on a need-to-know basis; and
- All other employees are strongly encouraged, but not required to report allegations of Sexual Misconduct to the Title IX Coordinator. These employees are otherwise encouraged to protect an individual's privacy to the greatest extent possible and share information only with the Title IX Coordinator.

Note: Under the Clery Act, the College is required to maintain records, advise the government about reports of certain crimes and issue timely warnings when there is a serious, continuing threat to the community. Such reports and warnings do not disclose identifying information.

### **A. Confidential Employees**

1. Student Complainants. Students who wish to speak to someone who will keep the communications confidential should speak to one of the following:

- a. Counselor at the counseling center; or
- b. Nurse or nurse practitioner at the College Health Office.

These individuals will not report the allegations to the Title IX Coordinator or other College employees without the student's permission. The only exception is in the case where there is an imminent threat of serious injury to the complainant or another person.

If a student speaks solely to a confidential employee, the College will be limited in its ability to conduct an investigation into the allegations or pursue disciplinary action against the respondent. Confidential employees will assist students in obtaining other necessary support.

2. Employee Complainants. Although Mercy does not directly employ individuals to whom Mercy employees can speak on a confidential basis regarding Sexual Misconduct, free confidential support services are available through the Employee Assistance Program (EAP), which is administered by an outside company. Confidential community counseling resources are also available throughout Westchester County and New York City. See Appendix B.

Complainants may use these confidential resources even if they decide not to report allegations of Sexual Misconduct or participate in an investigation, Mercy's resolution process or the criminal justice process. A complainant who first speaks to a confidential resource may later decide to report allegations to the College or with outside law enforcement.

## **B. Responsible Employees**

Individuals designated as Responsible Employees have a duty to report allegations of Sexual Misconduct, including all relevant details, to the Title IX Coordinator. These employees are not permitted to maintain a complainant's confidentiality but will maintain a complainant's privacy to the greatest extent possible, and information reported to them will be shared only with the Title IX Coordinator and other people responsible for handling the College's response to the report.

To the extent possible, before a complainant reveals any information to a responsible employee, the employee should advise the complainant of the employee's reporting obligations—and if the complainant wants to maintain confidentiality, direct the complainant to confidential resources.

Mercy has designated the following individuals as Responsible Employees:

- Athletic staff
- Campus Safety staff
- Deans and Associate Deans
- Faculty advisors to student groups
- Human Resources staff
- President's Office
- Provost and Associate Provosts
- Residential Life staff
- Staff Officers
- Title IX Coordinator
- Vice President, Assistant Vice Presidents and Executive Directors in the Office of Student Affairs

- Managers or Supervisors<sup>1</sup> regarding alleged Sexual Misconduct involving people who report to them

### C. Special Rules Concerning Public Awareness and Advocacy Events

Mercy supports public awareness events that help provide its community with information about Sexual Misconduct and how it can be addressed and prevented. In order to preserve the ability to participate freely in public awareness and advocacy events, if an individual discloses information about Sexual Misconduct at such event (for example, Take Back the Night gatherings, candlelight vigils, or protests) the College will not treat the disclosure as triggering an obligation to commence an investigation based on that information. Such individuals are encouraged to report Sexual Misconduct to College officials so that the College can provide resources and assistance.

## VII. REPORTING SEXUAL MISCONDUCT AT MERCY

In order for Mercy College to address allegations of Sexual Misconduct, it has to learn about the allegations. As such, Mercy strongly encourages individuals who have experienced Sexual Misconduct to report the incident to a designated College official, as set forth in Section VII.B below. The designated officials are trained to receive allegations of Sexual Misconduct, to ensure they are investigated in accordance with this Policy and to help complainants obtain necessary assistance. Students, employees and other community members are encouraged to report allegations of Sexual Misconduct to campus officials, regardless of whether they have reported the incident to outside law enforcement authorities and regardless of where the incident took place.

### A. Complainant's Rights

Individuals who have experienced Sexual Misconduct have the right to report allegations to the College or to decide not to do so. Students who report Sexual Misconduct have all of the rights contained in the Students' Bill of Rights (Appendix A).

Complainants also have the following rights:

1. To notify Campus Safety and/or outside law enforcement, or to choose not to report;
2. To have emergency access to a College official trained to interview victims of sexual assault and able to provide certain information, including reporting options and information about confidentiality and privacy. The official will, where appropriate, advise about the importance of preserving evidence and obtaining a Sexual Assault Forensic Examination (“SAFE”) as soon as possible. The official will also explain that the criminal process uses different standards of proof and evidence, and that any questions about whether an incident

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<sup>1</sup> **Managers** are employees who have authority to make tangible employment decisions with regard to other employees, including the authority to hire, fire, promote, compensate or assign significant different responsibilities. **Supervisors** are employees who are not managers, but have a sufficient degree of control over the working conditions or one or more employees, which might include evaluating their performance and making recommendations for changes in employment status that are given particular weight.

violated criminal law should be addressed to a law enforcement official or a district attorney's office;

3. To disclose the incident to a College representative who can offer confidentiality or privacy and assist in obtaining services (See Section VI above);
4. To describe the incident only to those campus officials who need the information in order to properly respond and to repeat the description as few times as necessary;
5. To have allegations of Sexual Misconduct investigated in accordance with Mercy Policy;
6. To have privacy preserved to the extent possible;
7. To receive assistance and resources on campus, including confidential and free on-campus counseling, and to be notified of other services available on and off campus, including the New York State Office of Victim Services;
8. To disclose the incident confidentially and obtain services from state and local governments;
9. To receive assistance from College officials in filing a criminal complaint, initiating legal proceedings in family court or civil court, and/or seeking an Order of Protection or the equivalent. In New York City and Westchester County, this assistance is provided by Family Justice Centers;
10. To receive assistance with effectuating an arrest when an individual violates an Order of Protection by contacting local law enforcement; and
11. To withdraw allegations or involvement from the process at any time.

## **B. Where to Report Allegations of Sexual Misconduct on Campus**

Students, employees and other community members who experience Sexual Misconduct and wish to report the allegations should notify one of these campus officials/offices:

1. Title IX Coordinator;
2. Campus Safety;
3. Vice President for Student Affairs;
4. Residence Life; or
5. Human Resources.

Contact information for these officials can be found at Mercy's [Title IX Website](#). Complainants are encouraged, but not required, to complete the Mercy Sexual Misconduct Allegation Form. The form can be submitted electronically, can be brought to one of the offices listed above or sent by email to [titleix.equity@mercy.edu](mailto:titleix.equity@mercy.edu). The College will respond to allegations, regardless of whether the form is submitted, or whether the complaint is oral or written.

When any of the officials or offices above is notified of allegations of Sexual Misconduct, they will notify the Title IX Officer immediately, who will provide a copy of this Policy to the complainant and coordinate with appropriate College offices to address the matter in accordance with this Policy, including providing appropriate supportive measures (addressed in Section VIII below). These officials and offices will maintain a complainant's privacy to the greatest extent possible, and all information in connection with the allegations, including the identities of the complainant and the respondent, will be shared only with those who have a legitimate need for the information.

### **C. Request that the College Maintain a Complainant's Anonymity or Not Conduct an Investigation**

Whether the College may maintain a complainant's anonymity or request to not conduct an investigation, depends on whether the allegations will proceed as a Title IX Sexual Harassment matter or a Non-Title IX Sexual Misconduct matter (see Section IX).

If the allegations will proceed as a Title IX Sexual Harassment matter, the Title IX Coordinator must inform the complainant that the complainant's identity may not be kept anonymous if the complainant wishes to proceed with a Title IX Formal Complaint, and that the notice to the respondent will reveal the complainant's identity. The complainant may choose whether to file a Title IX Formal Complaint when so informed. If the complainant chooses not to file a Title IX Formal Complaint, their identity will not be disclosed to the respondent.

If the allegations will proceed as a Non-Title IX Sexual Misconduct matter, a complainant may request: (1) that the matter be investigated only to the extent possible without further revealing their identity or revealing further details or (2) that no investigation into a particular incident be conducted. If a complainant makes such a request, the Title IX Coordinator will weigh the complainant's request against the College's obligation to provide a safe, non-discriminatory environment for all students, employees and other community members, including the complainant. Factors used to determine whether to honor such a request include, but are not limited to: (1) whether the respondent has a history of violent behavior or is a repeat offender; (2) whether the incident represents escalation of unlawful conduct by the accused from previously noted behavior; (3) any increased risk that the accused will commit additional acts of violence, (4) whether the accused used a weapon or force; (5) whether the complainant is a minor; (6) whether the College possesses other means to obtain evidence such as security footage, and (7) whether available information reveals a pattern of misconduct.

The College's decision to maintain the complainant's anonymity does not mean that anonymity can be guaranteed in all circumstances; rather, the College will make reasonable efforts to keep information confidential consistent with law. Of course, the College's ability to meaningfully investigate the incident and pursue disciplinary action may be limited by such a request for anonymity. Notwithstanding the decision of the Title IX Coordinator regarding the scope of any investigation, the College will provide the complainant with ongoing assistance and support, including, where appropriate, the supportive measures and accommodations set forth in Section VIII of this Policy.

## **D. Filing External Complaints**

Individuals who feel that they have been subjected to Sexual Misconduct have the right to avail themselves of any and all of their rights under law, including but not limited to filing complaints with one or more of the outside agencies listed below:

- U.S. Department of Education, Office for Civil Rights (students):  
<http://www2.ed.gov/about/offices/list/ocr/complaintprocess.html>  
[https://www.eeoc.gov/federal/fed\\_employees/filing\\_complaint.cfm](https://www.eeoc.gov/federal/fed_employees/filing_complaint.cfm)
- U.S. Equal Employment Opportunity Commission (employees):  
<https://www.eeoc.gov/how-file-charge-employment-discrimination>
- The New York State Division of Human Rights (students and employees):  
<https://dhr.ny.gov/complaint>
- The Westchester County Commission on Human Rights (students and employees):  
<https://humanrights.westchestergov.com/file-a-complaint>
- The New York City Commission on Human Rights (students and employees):  
<http://www1.nyc.gov/site/cchr/about/resources.page>

In certain circumstances, the College may close an investigation upon the filing of an external complaint. When this happens, the outside agency takes over the investigation and the College will cooperate with the investigation conducted by the outside agency. If the College closes an investigation for this reason, the Title IX Coordinator must notify the parties in writing.

## **E. Reporting and Other Actions by Bystanders**

While Responsible Employees are required reporters pursuant to this Policy, Mercy College encourages all other employees, students and community members to report incidents of Sexual Misconduct that they observe or become aware of to the Title IX Coordinator or other campus official so that the College may take appropriate steps to eliminate the alleged discrimination and assist a complainant in obtaining the appropriate supportive measures they need. Bystanders who choose to exercise this positive moral obligation will be supported by the College and shall be protected from retaliation. The College also encourages bystanders who witness Sexual Misconduct to take reasonable and prudent actions to prevent or stop the conduct. Actions may include direct intervention, calling law enforcement, or seeking assistance from a person in authority.

## **F. Reporting Retaliation**

Any individual who believes they have been retaliated against for making a report under this Policy, assisting someone making a report, or participating in any manner in an investigation, hearing or resolution of a Sexual Misconduct complaint may file a complaint with the Title IX Coordinator. All retaliation complaints will be investigated in accordance with the investigation procedures set forth in this Policy, and individuals who are found to have engaged in retaliation will be subject to disciplinary action.

## **G. Amnesty for Alcohol and/or Drug Use**

The health and safety of every student at Mercy College is of the utmost importance. Mercy recognizes that students who have been drinking and/or using drugs at the time that Sexual Misconduct occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Mercy College strongly encourages students to report incidents of Sexual Misconduct. Therefore, a complainant or bystander acting in good faith who reports any incident of Sexual Misconduct to Mercy College or law enforcement authorities will not be subject to the College's Code of Conduct for violations of Mercy's Drug and Alcohol Use Policy occurring at or near the time of the commission of the Sexual Misconduct. Amnesty does not apply to those who are illegally distributing alcohol or drugs.

## **H. Coordination with Outside Law Enforcement Authorities**

In cases where the Complainant files a complaint with outside law enforcement authorities as well as with the College, the College shall determine what actions to take based on its own investigation. The College may coordinate with outside law enforcement authorities in order to avoid interfering with their activities and, where possible, to obtain information regarding their investigation. The College may delay its investigation temporarily while law enforcement conducts its investigation; however, such delay shall not exceed ten (10) days unless the law enforcement agency specifically requests and justifies a longer delay. Neither a law enforcement determination whether to prosecute a Respondent, nor the outcome of any criminal prosecution, is dispositive of whether the Respondent has committed a violation of this Policy.

## **I. Timing**

The College will make every reasonable effort to ensure that the investigation and resolution of a complaint is carried out as timely and efficiently as possible. A good-faith effort will be made to complete the investigation, hearing, resolution and appeal within sixty (60) calendar days from the receipt of the formal complaint. If the process will take longer than sixty (60) days, the Title IX Coordinator will notify both Parties in writing and continue to keep them aware of the timeline and any further delays. If the College needs to temporarily delay the fact-finding portion of the investigation due to the evidence-gathering phase of a law enforcement investigation, both Parties will be informed in writing.

## **J. False and Malicious Allegations**

Members of the Mercy College community who make false and malicious complaints of Sexual Misconduct, as opposed to complaints which, even if erroneous, are made in good faith, may be subject to disciplinary action under this and other policies at the College. Finding a person in violation of College policy for making a materially false statement in bad faith in the course of an investigation does not constitute retaliation on the part of the College. A determination regarding responsibility, in and of itself, is not sufficient to conclude that any party made a bad faith materially false statement.

## **VIII. SUPPORTIVE MEASURES AND ACCOMMODATIONS**

Supportive measures and accommodations are non-disciplinary, non-punitive individualized services designed to restore or preserve equal access to education and to ensure safety, prevent retaliation and avoid an ongoing hostile environment. Supportive measures and accommodations are available to complainants, respondents and other affected parties. Supportive measures are available when the College becomes aware of allegations of Sexual Misconduct (including both Title IX Sexual Harassment matters and Non-Title IX Sexual Misconduct matters), whether or not a complainant chooses to move forward with an investigation and/or resolution. Supportive measures may be provided on an interim or continuing basis. The College may also take reasonable measures to ensure the safety of the College community at large.

The Title IX Coordinator is responsible for coordinating and ensuring the effective implementation of supportive measures and accommodations. When the College learns of allegations of Sexual Misconduct, the Title IX Coordinator will promptly contact a complainant to discuss the availability of supportive measures and accommodations, discuss the complainant's wishes with respect to supportive measures and accommodations and inform complainant that supportive measures and accommodations are available even if the complainant does not wish to proceed with an investigation and/or resolution of the allegations. Requests for supportive measures and accommodations should be made to the Title IX Coordinator.

The Title IX Coordinator will work with the Vice President of Student Affairs or their designee to assist students with obtaining supportive measures and accommodations. The Title IX Coordinator will work with the Human Resources Director or their designee to assist employees with obtaining supportive measures and accommodations.

### **A. Range of Supportive Measures and Accommodations**

Possible supportive measures and accommodations may include:

1. Making appropriate changes to academic programs, including changes in class schedule, accommodations to permit students to take an incomplete or drop a course or courses without penalty, permitting students to attend a class via videoconference platform or other alternative means, providing an academic tutor, or extending deadlines for assignments;
2. Making appropriate changes to residential housing situations or providing assistance in finding alternate housing;
3. Changing an employee's work assignment or schedule;
4. Providing an escort to and from class or campus work location;
5. Arranging appropriate transportation services to ensure safety;
6. Offering counseling services through the College's Counseling Center or other appropriate office, or referral to an off-campus agency;
7. Enforcing an Order of Protection issued by a court;

8. Issuing a No Contact Order whereby continued intentional contact would be a violation of Mercy Policy and subject to disciplinary action (see discussion below); and
9. Emergency removal of a respondent when they pose an imminent threat to the physical health or safety of any person (see discussion below).

## **B. No Contact Orders**

No Contact Orders are directives issued by the College prohibiting intentional contact or communication between specified parties. An individual who intentionally violates a No Contact Order is in violation of Mercy Policy and will be subject to disciplinary action. No Contact Orders may be issued for both complainants and respondents, as well as other individuals as appropriate.

No Contact Orders are issued by the Vice President of Student Affairs or their designee (for students) and the Director of Human Resources or their designee (for employees).

## **C. Emergency Removal**

In exceptional circumstances, where a respondent presents an immediate threat to the physical health or safety of any student or other individual arising from a report of Sexual Misconduct, the College may effectuate an emergency removal of a student or take similar emergency measures against an employee, consistent with Mercy policies or collective bargaining agreements.

Prior to emergency removal under this Section, the Title IX Coordinator will conduct an individualized safety and risk analysis to determine whether a respondent presents an immediate threat to the physical health or safety of any person arising from a report of Sexual Misconduct. The College will give the respondent notice and an opportunity to challenge the decision immediately following the removal (see Section VII below). Both parties will be notified at the same time and in the same manner of the emergency removal and if or when the emergency removal is lifted.

## **D. Process for Review of Supportive Measures and Accommodations, Including No Contact Orders and Emergency Removal**

Parties may request a prompt review of the need for and terms of supportive measures that directly affect them, including No Contact Orders and emergency removal. Issues that may be raised include possible modification or discontinuance of a No Contact Order.

If either party is a student, a request for review must be made to the College's Vice President for Student Affairs. If neither party is a student, a request for review must be made to the College's Director of Human Resources. If a case involves both a student and an employee, the Vice President for Student Affairs will consult with the Human Resources Director before making a decision. Requests for review must be in writing and parties may submit evidence to support their request. All requests will be reviewed within seven (7) days after receipt.

## **IX. EVALUATION OF INITIAL ALLEGATIONS OF SEXUAL MISCONDUCT**

Upon learning of allegations of Sexual Misconduct, the Title IX Coordinator will evaluate whether the alleged behavior falls within the scope of Title IX Sexual Harassment. If the alleged Sexual Misconduct meets these criteria, it must proceed as a Title IX Sexual Harassment matter:

- A. The allegations, if true, meet the definition of Title IX Sexual Harassment as defined above in Section III;
- B. At the time the allegations are made, the complainant is participating in, or attempting to participate in an education program or activity at Mercy;
- C. The alleged sexual harassment occurred in the school's education program or activity, against a person in the United States; and
- D. The Complainant filed a formal complaint of Sexual Harassment.

If the alleged Sexual Misconduct does not meet all of the above criteria, the allegations will proceed as a **Non-Title IX Sexual Misconduct** matter. For allegations that involve multiple incidents of Sexual Misconduct, some of which qualify as a Title IX Sexual Harassment matter and some of which qualify as a Non-Title IX Sexual Misconduct matter, the allegations will proceed as a Title IX Sexual Harassment matter. Allegations of discrimination covered by *Mercy's Policy on Equal Opportunity and Non-Discrimination* will continue to be referred to the Equity Compliance Specialist and handled pursuant to separate procedures outlined in that Policy.

Rights and procedures that apply to all Sexual Misconduct matters are addressed in Section X. Procedures for the investigation, resolution and/or adjudication of Title IX Sexual Harassment matters are addressed in Section XI. Procedures for the investigation, resolution and/or adjudication of Non-Title IX Sexual Misconduct matters are addressed in Section XII.

## **X. RIGHTS AND PROCEDURES THAT APPLY TO ALL SEXUAL MISCONDUCT MATTERS**

The following rights and procedures apply to all allegations of Sexual Misconduct, regardless of whether the allegations will proceed as a Title IX Sexual Harassment matter or a Non-Title IX Sexual Misconduct matter.

### **A. Rights of Parties During any Investigation and Resolution.**

Parties will have the following rights when an investigation or resolution is initiated under either Section XI or XII of this Policy:

1. To an investigation and process that is fair, impartial, timely, thorough and provides a meaningful opportunity to be heard;
2. To have the allegations investigated and/or adjudicated by individuals who receive annual training in conducting investigations of sexual violence, the effects of trauma, impartiality,

and the rights of the respondent, including the right to a presumption that the respondent is "not responsible" until any finding of responsibility;

3. To have the allegations investigated, resolved and/or adjudicated by individuals who are free from a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent;
4. To have the College's judicial or conduct process run concurrently with any criminal justice investigation and proceeding, except for temporary delays requested by external municipal entities while law enforcement gathers evidence. Temporary delays should not last more than ten (10) days except when law enforcement specifically requests and justifies a longer delay;
5. To an investigation process where the burden of proof and burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the college and not on the parties;
6. To receive reasonable advance written notice of any meeting they are required to or eligible to attend;
7. To exclude their own prior sexual history with persons other than the other party in the investigation or conduct process and their own mental health diagnosis and/or treatment, subject to certain exceptions described in Sections XI.E and XI.G;
8. To offer evidence during the investigation;
9. To have irrelevant evidence excluded from any hearing;
10. To review documents and tangible evidence, consistent with the Family Educational Rights and Privacy Act ("FERPA") and other laws;
11. To be accompanied by an advisor of their choice (who may be an attorney), who may assist and advise throughout the process, including during all related meetings and hearings;
12. To simultaneous notice of the outcome of proceedings, including written notice of findings of fact, decisions and sanctions if any, as well as the rationale for the decision and any sanction;
13. For Title IX Sexual Harassment matters, Mercy will provide an advisor to any party who does not have one, for the limited purpose of conducting cross examination at a hearing. See Section X for more information;
14. To access to a full and fair record of any hearing;
15. To protection against retaliation as defined in Section III; and
16. To protection against the provision of false statements and evidence.

## **B. Informal Resolution**

Informal Resolution is an alternative to the formal investigation and adjudication procedures outlined in Sections XI and XII and may include administrative resolution (such as a mutual agreement to abide by a No Contact Order), acceptance of responsibility and penalty, mediation or other alternative dispute resolution. In some cases, informal resolution may represent a beneficial outcome for both parties by providing an alternative to the formal investigation and adjudication process. This informal resolution process is available in matters proceeding as Title IX Sexual Harassment matters and Non-Title IX Sexual Misconduct matters, except in cases involving Title IX Sexual Harassment allegations by a student against an employee.

Informal resolution may take place at any point prior to a determination of responsibility. For Title IX Sexual Harassment matters, informal resolution is available after a Title IX Formal Complaint is filed. The Title IX Coordinator must consider every eligible case for informal resolution. When the Title IX Coordinator determines that it is appropriate to refer a matter for informal resolution, the Title IX Coordinator will provide the parties with written notice that an informal resolution is being offered to resolve the allegations. This written notice will include:

1. A description of the allegations;
2. The requirements of the informal resolution process, including the circumstances under which an informal resolution will preclude the parties from resuming an investigation and formal resolution arising from the same allegations;
3. Potential consequences resulting from participating in the informal resolution process, including what records will be maintained or could be shared with the other party; and
4. Notice that either party has the right to withdraw from the informal resolution process and resume an investigation and formal resolution process at any time prior to agreeing to an informal resolution.

Both parties must agree to begin the informal resolution process. The time frame for investigations will be tolled while the parties engage in the informal resolution process. The Title IX Coordinator must reevaluate the parties' progress towards informal resolution every thirty (30) days and has the discretion to terminate the informal resolution process and resume the investigation at any time.

Upon referral by the Title IX Coordinator, the informal resolution process is conducted by a qualified staff or faculty member designated by the Title IX Coordinator, in coordination with the Vice President of Student Affairs or a designated Human Resources representative, as applicable.

Either party has the right to end the informal resolution process at any time prior to finalizing an informal resolution agreement.

Any agreement reached through informal resolution must be acceptable to both parties and the College. If a resolution is reached, the parties will be notified in writing, and a written memorandum will memorialize the agreed upon resolution. Both parties must provide their voluntary, written consent before an informal resolution agreement is finalized. Once finalized, the obligations in the agreement will be binding and the allegations of Sexual Misconduct (and for Title IX Sexual Harassment matters, the Title IX Formal Complaint) will be deemed resolved. Once finalized, this memorandum will be maintained for seven (7) years, in compliance with recordkeeping requirements outlined in Section X.I.

Information learned as a direct result of the informal resolution process will not be documented in an investigatory report or subsequent adjudication. Informed learned from another source, however, will not be excluded from an investigatory report or subsequent adjudication merely because it was discussed or raised during the informal resolution process. The staff or faculty member conducting the informal resolution process is precluded from participating as a witness in the investigation or participating as a witness or presenter in a subsequent adjudication. Violations of informal resolution agreements will be referred for discipline or other appropriate action in accordance with Mercy Colleges policies and collective bargaining agreements.

### **C. Title IX Sexual Harassment Grievance**

Only in Title IX Sexual Harassment matters will grievance hearings be convened. Mercy will appoint a Hearing Officer, who is specially trained annually on the relevant law and this Policy.

The Hearing Officer will decide whether the respondent is responsible for the alleged Policy violation(s). Hearings will be scheduled promptly (including during the summers) at a convenient time for all parties.

The Hearing Officer will not participate in a case if they have been involved in the investigation, will be participating in the hearing as a witness or if they have a direct interest in the outcome of the matter. The Hearing Officer will not participate in the hearing if they have previously participated in a case involving the same parties.

### **D. Appeals for Title IX Sexual Harassment and Non-Title IX Sexual Misconduct**

Appeals are permitted in both Title IX Sexual Harassment matters and Non-Title IX Sexual Misconduct matters. The College shall convene a three-person Appeals Panel, with each Panel member being specially trained annually on the relevant law and this Policy.

A party may appeal the Hearing Officer's or College's determination of responsibility and/or the penalty imposed on the following grounds:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time of the hearing, which could affect the outcome of the matter;

3. The Title IX Coordinator, investigator or Hearing Officer 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; or
4. The disproportionate nature of the penalty.

The Appeal Panel may modify the penalty or remand the matter for a new hearing in Title IX Sexual Harassment matters or re-review in Non-Title IX Sexual Misconduct matters.

Parties intending to appeal under this section must send a written Notice of Appeal to the Title IX Coordinator within fifteen (15) days after the delivery of the written determination of responsibility. The Title IX Coordinator will notify the non-appealing party in writing within five (5) days of receipt of the Notice of Appeal and will provide the hearing recording to the relevant parties in a timely manner. The non-appealing party has fifteen (15) days from receipt of the Notice of Appeal to submit a response as well.

The Appeal Panel will review the hearing materials and written submissions of the parties. The Appeal Panel will issue a written decision that indicates the final outcome and rationale for that decision within fifteen (15) days of receipt of the non-appealing party's written submission or failure to provide a submission. The written decision will be provided simultaneously to both parties.

#### **E. Conflict/Bias**

If a party believes that any individual involved in the investigation, resolution, grievance or appeals process has 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, either party may make a request to have that conflicted individual removed from the process. Requests for removal must be made in writing within five (5) days of the notification that the individual is to be involved and include a detailed description of the conflict.

Requests for removal of the Hearing Officer or a member of the Appeals Panel must be made at least one (1) day before any hearing. All requests for removal must be directed to the Title IX Coordinator. After receiving a request for removal, the Title IX Officer will ask the individual with the alleged conflict to provide a short, written response to the request for removal and consider that response before making a determination. If a conflict exists, the Title IX Coordinator will take immediate steps to replace that investigator, informal resolution facilitator or Panel member to ensure an impartial and fair process.

#### **F. Hearing Recording**

The College shall make a recording of each hearing by some means such as a stenographic transcript, an audio recording or the equivalent. No other recording of the proceedings is permitted. A respondent who has been found responsible after a hearing is entitled upon request to a copy of such a record without cost upon the condition that it is not to be disseminated except to the respondent's advisor. In the event of an appeal, the parties will be provided a copy of such a record without cost, upon the condition that it is not to be disseminated except to their advisors.

The parties are prohibited from recording any part of the investigation and grievance process and from unauthorized copying of documents or materials, as well as unauthorized posting, distribution or otherwise sharing of said recordings, documents or materials to anyone other than family, an advisor or legal counsel. Copying includes but is not limited to: audio or video recording, streaming, photographing, scanning, transcribing, or any other form that conflicts with the spirit of this directive. Allegations of non-compliance under this Section will be reviewed by the Office of Student Affairs, or Human Resources, as appropriate, and may result in disciplinary action.

## **G. Student Respondent Withdrawal Before Allegations are Resolved**

When a student respondent withdraws from the College with a Sexual Misconduct investigation or adjudication pending, the respondent will be barred from returning until the investigation and/or adjudication is complete, or the allegations are otherwise resolved. If the respondent fails to appear at a subsequent hearing, the College may proceed in absentia, and any decision and sanction shall be binding, pending appeal.

The College must place a notation on the respondent's transcript that the respondent "withdrew with conduct charges pending." If the respondent is subsequently found not responsible at a hearing, the transcript notation will be removed. If the respondent is subsequently found responsible at a hearing and the penalty is either suspension or expulsion, the transcript notation will be adjusted in accordance with Section H below.

## **H. Transcript Notations**

When a student respondent is found responsible and the penalty is either suspension or expulsion, the College must place a notation on the respondent's transcript stating that respondent "was suspended/expelled after a finding of responsibility for a code of conduct violation."

For expulsion cases, after four years from the date of the conclusion of the disciplinary proceeding, or one year after the conclusion of any suspension (whichever is shorter), the respondent has the right to request that a transcript notation from a finding of responsibility be removed. However, in cases where a student respondent was expelled as a result of a Clery Act crime of violence (20 U.S.C. 1092(f)(1)(F)(i)(I)-(VIII)) including but not limited to sexual assault, the notation will not be removed. If a finding of responsibility is vacated for any reason, the notation must be removed.

## **I. Recordkeeping**

All records related to the College's response to allegations of Sexual Misconduct must be maintained for 7 years from the last action on a matter, unless such records must be maintained for a longer period of time pursuant to Mercy's Records Retention and Disposition Schedule.

These records include: records of any actions, including any supportive measures or accommodations taken in response to allegations of Sexual Misconduct; investigation records, materials, and documents; determinations regarding responsibility and disciplinary sanctions; remedies provided to a complainant designed to restore or preserve equal access to Mercy's education program or activity; any appeals and the result; any informal resolution and the result; and any recordings or transcripts of hearings.

Mercy's Records Retention and Disposition Schedule requires that student disciplinary records be maintained permanently.

## **XI. PROCEDURES FOR TITLE IX SEXUAL HARASSMENT MATTERS**

The following procedures apply *only* to Title IX Sexual Harassment matters.

### **A. Requirement of a Title IX Formal Complaint**

The Title IX Coordinator will determine if the initial allegations that were reported meet the criteria of a Title IX Formal Complaint, which is required to initiate a grievance process or resolution.

A Title IX Formal Complaint is a document filed by a complainant or signed by the Title IX Coordinator alleging Title IX Sexual Harassment (as defined in Section III) against a respondent and requesting that the College investigate the allegations. The Title IX Coordinator may sign a Title IX Formal Complaint with or without a complainant's desire to participate in a grievance process. A Title IX Formal Complaint may be a physical document, email or electronic submission through a campus online form, so long as it contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the complaint.

If the initial allegations that were reported do not meet the criteria of a Title IX Formal Complaint, the Title IX Coordinator will contact the complainant to explain how to file a Title IX Formal Complaint and notify them that a Title IX Formal Complaint is required to resolve the allegations. If no Title IX Formal Complaint is received within a reasonable time, the Title IX Coordinator may administratively close the matter. A complainant may file a Title IX Formal Complaint at any time thereafter.

### **B. Initiation of Title IX Grievance Procedure**

Upon receipt of a Title IX Formal Complaint, the Title IX Coordinator will notify the known parties that the College is commencing a Title IX grievance procedure. The notice will be in writing and will include the following:

1. Mercy's Policy on Sexual Misconduct;
2. Notice of the allegations, including sufficient details known at the time notice is sent, including the date, time and location of the alleged behavior, the identity of the parties and the specific act or acts that are alleged to violate the Policy's prohibition of Title IX Sexual Harassment, defined in Section III;
3. 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;
4. A statement that the allegations outlined in the notice may not be the final allegations considered by the college, and notice that if the College decides to investigate additional allegations, the College will provide notice of the additional allegations in a timely manner and with sufficient time for the parties to prepare for any hearing;

5. Notice that the parties may have an advisor of their choice, who may be an attorney, throughout the process;
6. Notice that parties may inspect and review evidence;
7. Notice that the parties are entitled to written notice of the date, time, location, participants and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate in any hearing, investigative interview or meeting;
8. Notice that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the college and not on the parties;
9. Mercy's prohibition on knowingly making false statements or knowingly submitting false information during the grievance process, as defined in Section VII.J.; and
10. Mercy's prohibition on retaliation, as defined in Section III.

This notice will be provided at least five (5) days before any initial interview unless a party consents to a shorter period.

### **C. Informal Resolution**

A Title IX Formal Complaint may be resolved through an informal resolution process (Section X.B.)

### **D. Dismissal of Title IX Formal Complaint Prior to Resolution**

1. **Mandatory Dismissals:** If, at any time after receipt of a Title IX Formal Complaint, it becomes clear that the allegations, if true, do not meet the definition of Title IX Sexual Harassment, the Title IX Coordinator must dismiss the Title IX Formal Complaint.
2. **Discretionary Dismissals:** The Title IX Coordinator may dismiss a Title IX Formal Complaint, or any allegations therein, if:
  - a. The complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the Title IX Formal Complaint or any allegations therein;
  - b. The respondent is no longer enrolled or employed by Mercy; or
  - c. Specific circumstances exist that prevent the College from gathering evidence sufficient to reach a determination as to the Title IX Formal Complaint or allegations therein.
3. **Process following dismissal of Title IX Formal Complaint:** Upon mandatory or discretionary dismissal of a Title IX Formal Complaint, the Title IX Coordinator must determine whether the allegations will proceed as a Non-Title IX Sexual Misconduct matter. The parties will be notified of the dismissal in writing and provided an opportunity to appeal, as discussed in Section XI.
4. This notice will include:

- a. The basis for the dismissal;
- b. Whether the allegations will proceed as a Non-Title IX Sexual Misconduct matter; and
- c. The parties' right to appeal the dismissal and the procedures to do so.

## **E. Appeal of Dismissal of a Title IX Formal Complaint**

Either party may appeal the dismissal of a Title IX Formal Complaint on the following grounds:

1. A procedural irregularity affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the dismissal was made, that could affect the outcome of the matter; and/or
3. The Title IX Coordinator, investigator(s), or decision-maker(s) 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.

Appeals under this section must be directed to the Director of Human Resources (if the complainant is an employee) or Vice President for Student Affairs (if the complainant is a student) in writing within five (5) days after the delivery of the written dismissal notice. The Director of Human Resources or Vice President of Student Affairs, or their designee will notify the non-appealing party in writing within five (5) days of the receipt of any appeal under this Section and will notify the non-appealing party of their opportunity to submit a written statement in support of, or challenging the dismissal of the Title IX Formal Complaint, due within five (5) days after the delivery of written notice. The Director of Human Resources or Vice President of Student Affairs, or their designee, will issue a written decision describing the result of the appeal and the rationale for the result within fifteen (15) days of the receipt of the appeal or within fifteen (15) days of the receipt of the opposing party's submission, whichever is longer. The written decision will be provided simultaneously to both parties.

The Title IX Coordinator must wait until an appeal under this section is decided before taking any further action as a Non-Title IX Sexual Misconduct matter.

## **F. Formal Resolution and Investigation**

### **1. Rights of the Parties**

When a Title IX Formal Complaint proceeds to formal resolution and investigation, the parties have the following rights in addition to those outlined in Section X.A.:

- a. To have the Title IX Formal Complaint investigated, resolved and/or adjudicated by individuals who receive training as required by federal regulation;

- b. To an evaluation of all relevant evidence, including both inculpatory and exculpatory evidence and credibility determinations that are not based on a person's status as a complainant, respondent or witness;
- c. To receive reasonable advance written or electronic notice of allegations, including the date, time, location and general description of the allegations, as well as the specific conduct rule or law violated and the possible sanction;
- d. To exclude questions and evidence about their own sexual predisposition or prior sexual behavior, unless such questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent (complainant only);
- e. To the exclusion (including the College's access, consideration, disclosure or other use) of a party's records that are made or maintained by a physician, psychiatrist, psychologist or other recognized professional or paraprofessional, and which are made and maintained in connection with the provision of treatment to the party, unless the college obtains the party's voluntary, written consent;
- f. To offer evidence during the investigation, including both fact and expert witnesses and other inculpatory and exculpatory evidence;
- g. To an investigative report that fairly summarizes relevant evidence;
- h. To inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a Title IX Formal Complaint, including inculpatory or exculpatory evidence whether obtained from a party or other source, consistent with FERPA and other law; and to submit a written response within ten (10) days of receiving said evidence and to have that written response considered by the Title IX Coordinator prior to the investigative report being finalized;
- i. To review the investigative report at least ten (10) days prior to any hearing and to respond in writing prior to a hearing or other time of determination regarding responsibility; and
- j. To a live hearing and cross examination; Mercy will provide an advisor to any party who does not have one, for the limited purpose of conducting cross examination at a hearing.

## 2. Investigation

The Title IX Coordinator is responsible for conducting investigations in a prompt, thorough, and impartial manner. Whenever an investigation is conducted, the Title IX Coordinator must:

- a. Inform the parties that a Title IX grievance procedure and investigation is being commenced and their rights during such investigation, as outlined in Sections X and XI;
- b. Coordinate investigative efforts with other appropriate offices;
- c. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the college and not on the parties; and
- d. Interview witnesses who might reasonably be expected to provide information relevant to the allegations, and review relevant documents and evidence.

The College must make reasonable efforts to ensure that the investigation is carried out within a reasonably prompt timeframe. While some allegations may require more extensive investigation, when possible, the investigation of a Title IX Formal Complaint must be completed within one hundred-twenty (120) days of receipt of the Title IX Formal Complaint (including the evidence review process, completion of the investigative report and report review process, as discussed below).

If there is a delay in completing the investigation, the Title IX Coordinator must notify the parties in writing and indicate the reason for the delay. The Title IX Coordinator should also note the reason for delay and projected timeline for completing the investigation in their case file. The reason for extension of the time frame of an investigation may include, but is not limited to: compliance with a request by law enforcement; a limited accommodation for the availability of parties, their advisors and witnesses; students on leave; exam periods, school breaks or vacations; and accounting for the complexities of a specific investigation, including the number of witnesses and volume of information provided by the parties.

### 3. Post-Investigation Review of Relevant Documents and Materials

Prior to the completion of the investigative report (discussed below), the Title IX Coordinator will send the parties (either in hard copy or electronic form) all of the relevant documents and materials gathered during the investigation that are directly related to the allegations raised in the Title IX Formal Complaint. These materials include any evidence upon which the Title IX Coordinator does not intend to rely when making a determination regarding responsibility and inculpatory or exculpatory evidence, whether obtained from a party or another source. The parties may submit a written response, due within ten (10) days after the materials are provided, which will be considered by the Title IX Coordinator prior to finalizing the investigative report.

The parties and their advisors must sign an agreement not to disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Title IX grievance process. The parties will have access to use and refer to these documents and materials during a hearing.

### 4. Investigative Report

Upon completion of the investigation, the Title IX Coordinator must prepare an investigative report, which will fairly summarize all relevant evidence gathered during the investigation. The investigative report must include:

- a. Procedural history of the case;
- b. Alleged Policy violations;
- c. A list of individuals interviewed;
- d. A list of exhibits;
- e. A list of additional documents and materials (not included as an exhibit) obtained as part of the investigation and directly related to the allegations, including inculpatory or exculpatory evidence; and
- f. A summary of party and witness statements and other relevant evidence, including a summary of relevant evidence pertaining to each allegation.

## 5. Review of Investigative Report

Upon completion of the investigative report, and at least ten (10) days prior to any hearing, the Title IX Coordinator will send the report to each party (and the party's advisor, if applicable) for their review and written response. A party's written response to the report is due within ten (10) days after the report is provided, and will be shared with the Hearing Officer and the other party prior to a hearing.

## G. Live Hearing

Following the completion of the investigation and investigative report, all Title IX Sexual Harassment matters will proceed to a live hearing. The same process and procedures will apply regardless of whether the respondent is a student or employee, although specific information regarding employee penalties is included in Sections XI and XII.

When possible, the live hearing must be completed within sixty (60) days after completion of the investigation. Live hearings pursuant to this section may be conducted with all parties physically present in the same geographic location or, at the college's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants to see and hear each other simultaneously.

### 1. Pre-Hearing Procedures

- a. Referral for Hearing

Following the conclusion of the investigative process, the Title IX Coordinator will notify the following parties that the matter is ready for a hearing before the Hearing Officer:

- i. For student respondents: the Office of Student Affairs.
- ii. For employee respondents: the Office of Human Resources.

The Title IX Coordinator will facilitate the scheduling of the hearing. The Title IX Coordinator will determine an appropriate physical location (if applicable) for the hearing on a case-by-case

basis. After the hearing is scheduled, the Office of Student Affairs or Office of Human Resources will coordinate the hearing, including, for example, providing a location, facilitating a remote platform, recording the hearing and arranging for presenters and advisors, as needed.

**b. Issuance of Notice of Hearing**

The Title IX Coordinator will issue the Notice of Hearing to both parties, which will include the date, time and location of the hearing and notice of the allegations identified in the investigative report. The Notice of Hearing must be sent by both first-class mail (or overnight mail) to the physical address or P.O. box address appearing on the records of the College and email using the party's Mercy email address, and any other email address known to the College. Notice of at least seven (7) days will be provided.

The parties are permitted one adjournment each, for a reasonable amount of time under the circumstances, without specifying a reason. Additional requests for an adjournment must be made at least five (5) days prior to the hearing date and shall be granted or denied at the discretion of the Hearing Officer. If either party fails to respond to the notice, appear on the adjourned date, or request an extension, the College may proceed without their presence, and any determinations of responsibility will be final, subject to appeal.

The Notice of Hearing must contain the following:

- i. A Complete and itemized statement of the allegations against the respondent, including the policy the respondent is charged with violating, and the possible penalties for such a violation;
- ii. A statement that the parties have the right to attend and participate fully in the hearing including the right: to present their side of the story; to present witnesses and evidence on their behalf; to be represented by an advisor (who may be an attorney, at their own expense) and if the respondent or the complainant does not have an advisor at the hearing, the College must provide an advisor for the limited purpose of cross examination; for their advisor to cross-examine witnesses presenting evidence; for the respondent to remain silent without assumption of responsibility; and
- iii. A warning that anything said may be used at a non-college hearing (for example, as part of a criminal case).

**c. Review of Evidence before Hearing**

At least five (5) days prior to the commencement of a hearing, the College will provide the parties and their advisors:

- i. A list of documents or other tangible evidence that the college intends to use at the hearing. In the event the College intends to use documents or other tangible evidence at the hearing that was not provided to the parties during the investigation phase the College must provide those materials to the parties and their advisors at least five (5) days prior to commencement of a hearing; and

- ii. A copy of the other party's written response to the investigative report.

At least five (5) days prior to the commencement of a hearing the College will provide the Hearing Officer the following:

- i. The investigative report, including exhibits; and
- ii. The parties' written responses to the investigative report.

## **H. Hearing Procedures**

All hearings pursuant to this Policy are closed hearings, meaning that participation and observation is limited to the parties, their advisors, witnesses, the Hearing Officer, the College presenter and any College staff required to coordinate the hearing.

### 1. Roles and Responsibilities

- a. The participants at the hearing are the College, the Respondent and the complainant.
- b. Hearing Officer

The Hearing Officer, discussed in Section X.C, serves as the decision-maker at the hearing. Prior to the hearing, the Hearing Officer will review the investigative report, exhibits and the parties' written responses to the investigative report. During the hearing, the Hearing Officer will listen to the testimony, review and consider evidence and ask questions of the witnesses. After the hearing, the Hearing Officer will consider all of the information and evidence reviewed, make a decision as to responsibility and penalty (if applicable) and issue a written determination of responsibility.

At the commencement of the hearing, the Hearing Officer must inform the parties of the charges, the hearing procedures, and their rights. The Hearing Officer must then ask the respondent to state whether they are responsible or not responsible for the conduct. The Hearing Officer shall exclude from the hearing room all persons who are to appear as witnesses, except the respondent and the complainant. The Hearing Officer must rule on the admissibility of evidence and must exclude irrelevant questioning, testimony and evidence.

#### d. College Presenter

The College will be represented by a presenter. Each academic year, the Vice President of Student Affairs must appoint/identify one or more College employee(s) to serve as presenters for hearings against student respondents involving their campuses. Similarly, the Director of Human Resources must appoint/designate employees to serve as presenters against employee respondents.

#### e. Advisors

The parties may be accompanied by an advisor of their choice (who may be an attorney) for the purposes of conducting cross-examination. In the event a party does not have an advisor present at the hearing, the College must provide an advisor for the limited purpose of conducting cross-examination on behalf of that party. A party's advisor may also assist and advise that party during

meetings and hearings but may not speak on behalf of the party or otherwise participate in the meeting or hearing.

Advisors must treat all hearing participants, including the Hearing Officer, parties and witnesses, with respect and according to the decorum guidelines (in Appendix C of this Policy), which shall be provided to each party prior to the hearing. Any party intending to appear with an attorney must give the college five (5) days' notice of the attorney's name and contact information.

## 2. Responsibility Phase

The College bears the burden of proving the allegations by a preponderance of the evidence.

### a. Presentation of Evidence

Evidence will be presented in the following order: College, complainant and respondent. The parties have an equal opportunity to present relevant evidence, including fact and expert witnesses and other inculpatory and exculpatory evidence to the Hearing Officer. If a party submits documentary evidence during a hearing that was not previously shared during the investigation, the chairperson may, at the request of any other party grant an adjournment of the hearing as necessary in the interest of fairness, to permit the requesting party time to review the newly produced evidence.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

Questions and evidence of the mental health diagnosis and/or treatment of any party may not be introduced, unless that party provided their voluntary and written consent for such materials to be made part of the investigation and the information is directly related to the allegations raised in the Title IX Formal Complaint.

### b. Cross Examination

Each party's advisor will be permitted to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. A party may not conduct cross-examination personally, but must do so through their advisor. In the event a party does not have an advisor and the case proceeds to a hearing, the College must provide an advisor for the limited purpose of conducting cross-examination on behalf of that party. All advisors must follow the decorum guidelines, which shall be provided to each party prior to the hearing.

Before a complainant, respondent, or witness answers a cross-examination or other question, the Hearing Officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

The Hearing Officer cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross examination or other questions.

### 3. Determination of Responsibility

Following the hearing, the Hearing Officer will determine whether there is a preponderance of evidence that the respondent violated the Policy, which may be based on information contained in the investigative report and the testimony and evidence presented at the hearing.

### 4. Penalty Phase

If a respondent is found responsible for violating this Policy, the Hearing Officer will determine the penalty to be imposed; except that if the respondent is a represented employee whose discipline is subject to a collective bargaining agreement, there will be no penalty phase, and a determination that the respondent is responsible will be referred for discipline under the applicable collective bargaining agreement.

Following the responsibility phase of the hearing, the complainant, respondent, and College, will have the opportunity to introduce evidence and make arguments related to what the appropriate penalty should be, in the event the respondent is found responsible for violating the Policy. The complainant, respondent and the College will also have the opportunity to introduce evidence of and comment on the respondent's character, including any past findings of responsibility for Domestic Violence, Stalking, Sexual Assault or any other Sexual Misconduct, and submit a statement regarding the impact of the conduct.

The College may also introduce a copy of the respondent's previous disciplinary records, if any, provided the respondent was shown a copy of the records prior to the commencement of the hearing.

The Hearing Officer will consider the disciplinary records, as well as any documents or character evidence introduced by the respondent, the complainant, or the College, in determining an appropriate penalty.

If either party chose not to participate in the responsibility phase of hearing, they still have the opportunity to introduce evidence and make arguments related to what the appropriate penalty should be and to provide or make an impact statement.

### 5. Notice of Hearing Determination

The Hearing Officer will issue a written Determination of Responsibility, which must include the following:

- a. Identification of the allegations potentially constituting Sexual Misconduct;
- b. A description of the procedural steps taken from the receipt of the Title IX Formal Complaint through the determination, including any notifications to the parties,

- interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- c. Findings of fact supporting the determination;
  - d. Conclusions regarding the application of this Policy to the facts;
  - e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
  - f. If a student respondent is found responsible, any disciplinary sanctions that will be imposed on the respondent or, if an employee is found responsible, a statement that the matter will be referred to the Director of Human Resources for discipline and, if applicable, under the applicable collective bargaining agreement;
  - g. A statement of whether remedies designed to restore or preserve equal access to Mercy's education program or activity will be provided to the complainant; and
  - h. Procedures and permissible bases for the parties to appeal.

The College will send the written determination of responsibility to the parties simultaneously, within fifteen (15) days of the conclusion of the hearing. The determination of responsibility will be sent by both first-class mail (or overnight mail) to the physical address or P.O. box address appearing on the records of the College (unless a party requests in writing prior to the conclusion of the hearing that a different addressed be used) and email using each party's Mercy email address, and any other email address provided to the College specifically for this purpose. In cases involving two or more complainants or respondents, the Hearing Officer has twenty (20) days from the conclusion of the hearing to send the decision. The decision is final subject to any appeal.

## 6. Remedies for Complainants

In the event the respondent is found responsible for violating the Policy, the Title IX Coordinator will implement remedies for the complainant, designed to restore or preserve equal access to the recipient's education program or activity. Such remedies may include a continuation of the same supportive measures and accommodations described in Section VIII, but need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.

## 7. Sanctions for Respondents

### a. Range of Sanctions for Students

Sanctions for student respondents range from a warning to suspension or expulsion from the College.

When a disciplinary hearing results in a penalty of expulsion or suspension for one term or more, the respondent must be barred from attendance at Mercy while the penalty is being served.

Students may also be subject to Mercy's Policy on transcript notations which is discussed in Section X.H.

**b. Range of Sanctions for Employees**

As discussed above in Sections XI and XII, there will be no penalty phase for employees who are subject to a disciplinary process contained in a collective bargaining agreement; instead, a determination that the respondent is responsible will be referred for discipline under the applicable collective bargaining agreement. For all other employees, sanctions range from a reprimand to suspension to termination of employment.

**XII. PROCEDURES FOR NON-TITLE IX SEXUAL MISCONDUCT MATTERS**

The following procedures will apply to Non-Title IX Sexual Misconduct matters:

When the College becomes aware that Sexual Misconduct may have been committed by or against a student, employee or contractor, vendor or visitor, the College must conduct an investigation unless the information provided is insufficient to permit an investigation or the complainant has requested that the College refrain from such an investigation and the College has determined that refraining from an investigation will not result in a continuing threat to the College community.

**A. Rights of the Parties**

Whenever an investigation of Non-Title IX Sexual Misconduct takes place, the parties have the rights described in Section X.

**B. Informal Resolution**

A Non-Title IX Sexual Misconduct matter may be resolved through an informal resolution process described in Section X.B.

**C. Investigation and Findings**

The Title IX Coordinator is responsible for conducting an investigation in a prompt, thorough, and impartial manner. Whenever an investigation is conducted, the Title IX Coordinator must:

1. Coordinate investigative efforts with other appropriate offices;
2. Provide the parties written notice that an investigation is being commenced, including notice of the allegations and sufficient details known at the time notice is sent, including the date, time and location of the alleged behavior and the specific act or acts that are alleged to violate the Policy's prohibition on Sexual Misconduct;
3. Interview witnesses who might reasonably be expected to provide information relevant to the allegations, and review relevant documents and evidence. Both the complainant and respondent must be informed that they have the right to provide relevant documents and to propose witnesses whom they reasonably believe can provide relevant information. A respondent employee who is covered by a collective bargaining agreement may consult

with and have a union representative present at any interview of that employee conducted as part of such investigation; and

4. Create an investigative report that fairly summarizes relevant evidence and makes findings as to whether, in the investigator's opinion, there is a preponderance of evidence that the respondent is responsible for the allegation(s).

The College must make reasonable efforts to ensure that the investigation and resolution of allegations of Sexual Misconduct are carried out within reasonably prompt timeframes. While some allegations may require more extensive investigation, when possible, the investigation of allegations of Sexual Misconduct (including completion of the investigative report) must be completed within one hundred-twenty (120) days of the receipt of the allegations.

If there is a delay in completing the investigation, the Title IX Coordinator must notify the parties in writing and indicate the reason for the delay. The Title IX Coordinator should also note the reason for delay and projected timeline for completing the investigation in their case file. The reason for extension of the time frame of an investigation may include but is not limited to: compliance with a request by law enforcement; a limited accommodation for the availability of parties, their advisors and witnesses; students on leave; exam periods, school breaks or vacations; and accounting for the complexities of a specific investigation, including the number of witnesses and volume of information provided by the parties.

Upon completion of the investigation, the Title IX Coordinator must prepare an investigative report, which will fairly summarize and evaluate relevant evidence gathered during the investigation. The investigative report will include:

1. Procedural history of the case;
2. Alleged Policy violations;
3. A list of individuals interviewed;
4. A list of exhibits;
5. Summary of party and witness statements and other relevant evidence;
6. Analysis of evidence, including credibility assessments; and
7. Factual findings regarding whether, in the investigator's opinion, there is a preponderance of evidence that the respondent is responsible for the allegation(s).

#### **D. Action Following the Termination of an Investigation**

##### **1. Students**

Within thirty (30) days following the termination of an investigation, the Title IX Coordinator will summarize for the file the actions taken in response to the allegations and the basis on which the investigation was closed.

#### a. Complainant Appeal of Unsubstantiated Allegations

If the complainant is a student, the Title IX Coordinator must provide the investigative report to both parties within five (5) days of the completion of the report. If the allegations are unsubstantiated, in whole or in part, the student complainant has the right to appeal the Title IX Coordinator's determination to the Appeals Panel. Appeals may be based on the following grounds:

- i. Procedural irregularity that affected the outcome of the matter;
- ii. New evidence that was not reasonably available at the time of the investigation, which could affect the outcome of the matter; or
- iii. The Title IX Coordinator 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 complainant must submit their written appeal to the Title IX Coordinator within fifteen (15) days after the delivery of the investigative report. The Title IX Coordinator will provide the complainant's appeal to the respondent within five (5) days of submission. The respondent will have the opportunity to submit a written response to the appeal, due within fifteen (15) days after the delivery of the complainant's appeal.

The Title IX Coordinator will convene the Appeals Panel. The Appeals Panel will review the investigative report, the complainant's appeal and the respondent's response, if any. The Appeal Panel will issue a written decision within fifteen (15) days of receipt of the respondent's written submission or failure to provide a submission. The written decision will be provided simultaneously to both parties.

If the Appeals Panel grants the appeal, it may remand the matter for appropriate action, which may include, but is not limited to, the evaluation of new evidence or a new investigation.

Following the complainant's appeal, if any, the Title IX Coordinator shall send the investigative report, as well as any decision on appeal, to the Vice President of Student Affairs. The College President must also be apprised of the outcome of any appeal. A copy of the report and any decision on appeal must be maintained in the files of the Title IX Coordinator.

#### b. Action Against Student Respondents

Following receipt of the investigative report, the Vice President for Student Affairs when warranted by the facts, authorize such action as they deem necessary, including action to correct the effects of the conduct investigated or prevent further harm to an affected party or others similarly situated. This may include a recommendation that disciplinary action be commenced against a respondent, as set forth in Section XII.E. below, or for unsubstantiated findings, authorization to close the matter.

### 2. Employees

The Title IX Coordinator must provide the investigative report to the Director of Human Resources. Following receipt of the investigative report, the Director of Human Resources must, when warranted by the facts, authorize such action as they deem necessary, including action to correct the effects of the conduct investigated or prevent further harm to an affected party or others similarly situated. This may include a recommendation that disciplinary action be commenced against a respondent, as set forth in Section XII.E. below, or for unsubstantiated findings, authorization to close the matter.

Within thirty (30) days following the termination of an investigation (for example, because it was resolved by informal resolution or the complainant withdrew cooperation), the Title IX Coordinator will summarize for the file the actions taken in response to the allegations and the basis on which the investigation was closed.

## **E. Disciplinary Process and Procedures**

### **1. Disciplinary Action**

The following procedures apply when the Vice President for Student Affairs or Director of Human Resources recommends that disciplinary action be commenced against a respondent student or employee for violations of this Policy:

#### **a. Discipline Against Students**

When the Vice President for Student Affairs recommends discipline against a student for violations of this Policy, the matter is referred to the Office of Community Standards and Student Conduct and action must be taken in accordance with the Judicial Process in the Student Handbook. Sanctions for student respondents range from a warning to suspension or expulsion from the College. When a finding results in a penalty of expulsion or suspension for one term or more, the respondent must be barred from attendance at Mercy while the penalty is being served. Students may also be subject to Mercy's policy on transcript notations, discussed in Section X.H.

#### **b. Discipline Against Employees**

In cases where the Director of Human Resources recommends discipline against an employee, the matter is referred for disciplinary action in accordance with any applicable College policies, rules and collective bargaining agreements. Penalties for employees include, depending on the employee's title, reprimand, suspension, demotion, fine, or termination of employment following applicable disciplinary procedures.

For additional information on the disciplinary process in specific cases, parties should consult the Office of Human Resources to provide information. Respondents may also consult with their union representative, if any.

#### **c. Action Against Visitors and Contractors**

In cases where the person accused of Sexual Misconduct is not a Mercy student or employee, the College's ability to take action against the respondent is usually limited. However, the College will take appropriate actions within its control, such as restricting the visitor's access to campus.

If the person accused is a contractor or vendor, Mercy may ask that that individual be removed from Mercy's account.

**d. No Disciplinary Action**

In cases where the Vice President for Student Affairs or the Director of Human Resources decides not to bring disciplinary action, the Title IX Coordinator must inform the parties of that decision at the same time, in writing, and must offer any appropriate support services, including counseling, to both.

**XIII. COLLEGE OBLIGATIONS UNDER THIS POLICY**

In addition to addressing allegations of Sexual Misconduct, the College has the following obligations:

**A. Dissemination of Policies, Procedures, and Notices**

The Title IX Coordinator, in coordination with the Office of Student Affairs, Office of Campus Safety, Office of Human Resources and other appropriate offices, is responsible for the wide dissemination of the following: (i) this Policy; (ii) Mercy's Notice of Non-Discrimination; (iii) the Title IX Coordinator's name, phone number, office location, and email address and (iv) contact information for the Office of Campus Safety. Such dissemination includes posting the documents and information on the College website, and including it in residence life materials and training and educational materials.

The Students' Bill of Rights, which is appended to and made a part of this Policy, must be distributed to any individual reporting an incident of Sexual Misconduct at the time the report is made. It must also be distributed annually to all students, made available on the College's website and posted in Mercy College residence halls.

**B. Training and Educational Programming**

Mercy is responsible for providing training to Title IX Coordinators, investigators, the Hearing Officer, Appeals Panel members, and anyone who facilitates informal resolutions.

The Title IX Coordinator, in coordination with other applicable offices, including Campus Safety, Office of Human Resources and Office of Student Affairs, is responsible for ensuring that the College provides training to college employees on their obligations under this Policy; provides education on this Policy and on Sexual Misconduct (including Domestic Violence, Dating Violence, Stalking and Sexual Assault) to new and continuing students; and promotes awareness and prevention of Sexual Misconduct among all students and employees. Specific required trainings include the following:

**1. Training for Responsible and Confidential Employees**

The College must provide training to all employees who are required to report incidents of Sexual Misconduct under this Policy, as well as those employees who have been designated as confidential employees.

## 2. Training for Title IX Coordinators, Investigators, and Other Relevant Employees

Mercy will provide training on the topics below to Title IX Coordinators, investigators, Hearing Officers, and Appeals Panel members, and any person who facilitates an informal resolution process. Training for Title IX Coordinators, Hearing Officers, investigators, and Appeal Panel members will be at least annual.

- a. The definition of Sexual Misconduct, including Sexual Harassment, Title IX Sexual Harassment, Dating Violence, Domestic Violence and Stalking;
- b. How to conduct an investigation;
- c. How to create an investigative report that fairly summarizes relevant evidence;
- d. The grievance process, including hearings, appeals and informal resolution processes, as applicable;
- e. Impartiality, including avoiding pre-judgment of the facts, conflicts of interest, and bias;
- f. Relevance of questions and evidence, including the fact that sexual predisposition or prior sexual acts with individuals other than the parties are generally not relevant, the rights of the respondent, including the right to a presumption that the respondent is "not responsible" until a determination regarding responsibility is made at the conclusion of the applicable processes;
- g. The scope of the College's education programs and activities;
- h. The effects of trauma;
- i. Other relevant College policies and procedures; and
- j. Any technology to be used at a live hearing.

## 3. Student Onboarding and Ongoing Education

The College shall adopt a comprehensive student onboarding and ongoing education campaign to educate students about Sexual Misconduct, including Domestic Violence, Dating Violence, Stalking, and Sexual Assault. During the student onboarding process, all new first-year and transfer students must receive training on this Policy and on a variety of topics relating to Sexual Misconduct. In addition, the College shall offer and administer appropriate educational programming to residence hall students, athletes, and student leaders. The College must also provide such educational programming to any other student groups which the college determines could benefit from education in the area of Sexual Misconduct. The College must also share information on Domestic Violence, Dating Violence, Stalking and Sexual Assault prevention with parents of enrolling students. See <https://www.mercy.edu/about/title-ix>

## 4. Campus Climate Assessments

Mercy College must conduct, no less than every other year, a climate assessment to ascertain its students' general awareness and knowledge of Mercy's Policy and procedures regarding sexual misconduct, including but not limited to student experiences with and knowledge of reporting, investigation and disciplinary processes. The assessment instrument must include all topics required to be included under applicable law, including Section 129-B of the New York State Education Law.

Mercy will publish the results of the surveys on its Title IX web page. The published results will not contain any information which would enable a reader to identify any individual who responded to the climate assessment.

#### **XIV. RULES REGARDING INTIMATE RELATIONSHIPS BETWEEN EMPLOYEES AND STUDENTS**

##### **A. Relationships Between Faculty or Employees and Students**

Sexual activity or amorous or dating relationships ("intimate relationships"), even when apparently consensual, are inappropriate when they occur between a faculty member or employee and any student for whom they have a professional responsibility. Those relationships are inappropriate because of the unequal power dynamic between students and faculty members and between students and employees who advise or evaluate them, such as athletic coaches or workplace supervisors. Such relationships necessarily involve issues of student vulnerability and have the potential for coercion. In addition, conflicts of interest or perceived conflicts of interest may arise when a faculty member or employee is required to evaluate the work or make personnel or academic decisions with respect to a student with whom they are having an intimate relationship.

Therefore, faculty members and other employees are prohibited from engaging in intimate relationships with students for whom they have a professional responsibility, including undergraduates and graduate students.

For purposes of this Section, professional responsibility for a student means responsibility over any academic matters, including teaching, counseling, grading, advising for a formal project such as a thesis or research, evaluating, hiring, supervising, coaching, making decisions or recommendations that confer benefits such as admissions, registration, financial aid, other awards, remuneration, or fellowships, or performing any other function that might affect teaching, research, or other academic opportunities.

##### **B. Relationships Between Supervisors and Employees**

Many of the concerns about intimate relationships between faculty members or employees and students also apply to relationships between supervisors and employees they supervise. Those relationships therefore are strongly discouraged. Supervisors must disclose any such relationships to their supervisors in order to avoid or mitigate conflicts of interest in connection with the supervision and evaluation of the employees with whom they have an intimate relationship.

Mitigation may involve the transfer of either the supervisor or employee, reassigning the responsibility to evaluate the employee to a different supervisor, or other appropriate action.

For purposes of this Section, supervising an employee means supervising in an employment setting, including hiring, evaluating, assigning work, or making decisions or recommendations that confer benefits such as promotions, raises or other remuneration, or performing any other function that might affect employment opportunities.

## **XV. IMPLEMENTATION**

This Policy applies to Sexual Misconduct that is alleged to have occurred on or after August 14, 2020. Sexual Misconduct that alleged to have taken place before the effective date of this Policy will be handled in accordance with the Mercy College Policy and Procedures Relating to Sexual Misconduct that was in effect at the time the behavior occurred.

Should any portion of the 2020 Title IX Regulations be stayed or held invalid by a court of law, or should the Title IX Final Regulations be withdrawn or modified to not require the elements of this Policy, the invalidated elements of this Policy will be deemed revoked as of the publication date of the opinion or order. Should this Policy's Title IX-specific procedures be revoked in this manner, any Sexual Misconduct covered under Section XI, including any elements of the process that occur after the revocation date if a case is not complete by that date of revocation, shall be investigated, resolved and/or adjudicated under Section XII without further action by Mercy.

## **APPENDIX A**

### **Mercy College Student Bill of Rights**

When reporting or responding to sexual misconduct, sexual violence, and/or relationship violence, all **Mercy College** students have the right to:

- Make a report to local law enforcement and/or State Police;
- Have disclosures of domestic violence, dating violence, stalking and sexual assault treated seriously;
- Make a decision about whether to disclose a crime or violation and participate in the disciplinary process and/or criminal justice process free from pressure by the College;
- Participate in a College disciplinary process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
- Be treated with dignity and to receive from the College courteous, fair, and respectful health care and counseling services, where available;
- Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
- Describe the incident to as few College representatives as practicable and not be required to unnecessarily repeat a description of the incident;
- Be protected from retaliation by the College, any student the accused and/or respondent, and/or their friends, family and acquaintances within the jurisdiction of the College;
- Access to at least one level of appeal of a determination;
- Be accompanied by an advisor of choice who may assist and advise a reporting individual, respondent throughout the disciplinary process, including during all meetings and hearings related to such process; and
- Exercise civil rights and practice of religion without interference by the investigative, criminal justice or disciplinary process of the College.

For additional information and a copy of the *Mercy College Policy and Procedures Relating to Sexual Misconduct* contact: Thomas McDonald, Title IX Coordinator/Equity Compliance Specialist, [tmcdonald7@mercy.edu](mailto:tmcdonald7@mercy.edu), Office: 914.674.7679, Cell: 914.839.0131, or visit: [www.mercy.edu/about-mercy/title-ix](http://www.mercy.edu/about-mercy/title-ix).

## **APPENDIX B**

### **MERCY COLLEGE TITLE IX RESOURCE LIST**

#### **EMERGENCY NUMBERS**

- Campus Emergency Number (914) 674-9999 or x9999
- Police, Fire, or Medical Emergency Number 911

#### **CAMPUS SAFETY NON-EMERGENCY NUMBERS**

- Dobbs Ferry Campus: (914) 674-7225
- Bronx Campus: (718) 678-8983
- Manhattan Campus: (212) 615-3319
- Yorktown Campus: (914) 455-2174

#### **CAMPUS SAFETY MAIN LOCATION**

- Department of Campus Safety, Main Hall, Room 234, Dobbs Ferry Campus, Monday to Friday, 9:00 am to 5:00 pm
- Command Center, Founders Hall, staffed 24-hours a day, 7-days a week

#### **TITLE IX COORDINATOR**

- Thomas McDonald (914) 674-7679  
Verrazano Hall, Room 106  
Dobbs Ferry Campus  
[tmcdonald7@mercy.edu](mailto:tmcdonald7@mercy.edu) or [titleix.equity@mercy.edu](mailto:titleix.equity@mercy.edu)

#### **ON-CAMPUS CONFIDENTIAL RESOURCES**

##### **Mercy College Health and Wellness Office**

- Dobbs Ferry Campus, Main Hall 123
- Bronx Campus, Room 2125
- Manhattan Campus, Room 341
- Ori Shinar, Psy.D., Director of Mental Health Counseling (914) 674-7233
- Colleen Powers, Director of Health & Wellness/Nurse Practitioner (914) 674-7707

#### **SEXUAL ASSAULT FORENSIC EXAMINER (SAFE) HOSPITALS**

##### **Westchester County**

- Westchester Medical Center, 100 Woods Road, Valhalla, NY 10595, (914) 493-7018
- Mid-Hudson Valley, Westchester Medical Center, 241 North Road, Poughkeepsie, NY 12601, (845) 483-5000

##### **The Bronx**

- Jacobi Medical Center, 1400 Pelham Parkway, (718) 918-5000
- Lincoln Medical & Mental Health Center, 234 East 149th Street, (718) 579-5700
- North Central Bronx Hospital, 3424 Kossuth Avenue & 210th Street, (718) 519-3500

## **Manhattan**

- Bellevue Hospital Center, 462 First Avenue, (212) 562-4132
- Harlem Hospital Center, 506 Lenox Avenue, (212) 939-1000
- Lenox Health Greenwich Village, 30 Seventh Avenue, (516) 465-8018
- Metropolitan Hospital Center, 1901 First Avenue, (212) 423-8993
- Mount Sinai Beth Israel, First Ave at 16th Street, (212) 420-2873
- Mount Sinai Hospital, One Gustave L. Levy Place, (212) 241-7005
- Mount Sinai Morningside, 1111 Amsterdam Avenue, (212) 523-4295
- New York-Presbyterian Hospital, Columbia Presbyterian Center, 622 West 168th Street, (212) 305-2500
- New York-Presbyterian Hospital, New York Weill Cornell Center, 525 East 68th Street, (212) 746-5454

## **Queens**

- Elmhurst Hospital Center, 79-01 Broadway, (718) 334-4000
- Queens Hospital Center, 82-68 164th Street, (718) 883-2350

## **Brooklyn**

- Coney Island Hospital, 2601 Ocean Parkway, (718) 616-3000
- Kings County Hospital Center, 451 Clarkson Avenue, (718) 245-3901
- Woodhull Medical & Mental Health Center, 760 Broadway, (718) 963-8101

## **Staten Island**

- Richmond University Medical Center, 355 Bard Avenue, (718) 818-2413

## **COMMUNITY RESOURCES**

The following community resources offer confidential resources for victims of sexual assault, domestic violence, and other forms of sexual violence. Services include 24/7 hotlines; counseling; advocacy; legal assistance; shelter; medical care; HIV and STD screenings; and assistance working with local police, courts, and area hospitals.

## **WESTCHESTER**

- **WestCOP – Victim Assistance Services**  
Office: (914)345-3113  
24/7 Hotline: (914) 345-311, Spanish available  
24/7 Toll Free Hotline: (855) 827-2255, Spanish available  
[www.westcop.org](http://www.westcop.org)
- **Hope's Door**  
Office: (914) 747-0818  
24/7 Hotline: (888) 438-8700, Spanish available  
[www.HopesDoorNY.org](http://www.HopesDoorNY.org)
- **My Sister's Place**  
24/7 Hotline: (800) 298-7233, Spanish available  
[www.mspny.org](http://www.mspny.org)
- **Putnam/Norther Westchester Women's Resource Center**  
4/7 Hotline: (845) 628-2166, Spanish available  
[www.pnwwrc.org](http://www.pnwwrc.org)
- **Westchester County Office for Women**

Office: (914) 995-5972, English  
Office: (914) 995-2099, Spanish  
After Hours: (914) 995-2099  
Sexual Assault Hotline 24/7: (833) 220-2444

## NEW YORK CITY

- **Bronx DA's Office – Crime Victim's Assistance Unit**  
198 East 161<sup>st</sup> St. – Room 558 (Bronx)  
Office: (718) 838-7309
- **Sexual Assault Treatment Program**  
North Central Bronx Hospital  
3424 Kossuth Avenue (Bronx)  
(718) 519-2121
- **Mount Sinai Victim Support Services**  
312 East 94<sup>th</sup> Street (Manhattan)  
Office: (212)731-7546  
24/7 Hotline: (212) 423-2140, Spanish available
- **The DOVE Program (Domestic & Other Violence Emergencies)**  
New York Presbyterian  
622 West 168<sup>th</sup> Street (Manhattan)  
24/7 Hotline: (212) 305-9060, Spanish available
- **SAFE Center, Sexual Assault Response Team**  
Bellevue Hospital Center  
462 First Avenue (Manhattan)  
(212) 562-3435
- **Rape Crisis & Violence Intervention**  
Beth Israel Medical Center  
317 East 17<sup>th</sup> Street (Manhattan)  
(212) 420-4516

## ADDITIONAL HOTLINES AND RESOURCES

- **NYS Domestic Violence Hotlines**  
24/7 Hotline: (800) 942-6906, multiple languages  
24/7 Hotline: Deaf/Hard of Hearing (800) 799-7233 or 711
- **Safe Horizons Hotline**  
24/7 Hotline: (800) 621-HOPE (4673), Spanish available  
[www.safehorizon.org](http://www.safehorizon.org)
- **Rape, Abuse & Incest National Network (RAINN)**  
24/7 Hotline: (800) 656-HOPE (4673), Spanish available  
[www.rainn.org](http://www.rainn.org)
- **NYC Antiviolence Project – LGBTQ**  
24/7 Hotline: (212) 714-1141, Spanish available

## ADDITIONAL LEGAL ASSISTANCE

- **Pace Law School Women's Justice Center** (914) 287-0739
- **Legal Services of Hudson Valley** (877) 574-8529

- **My Sister's Place Legal Center** (914) 948-8466
- **Westchester Hispanic Coalition** (914) 948-8466
- **Empire Justice Center** (914) 422-4329

*Note: If any of the above resources do not meet a specific need, the Title IX Coordinator can help locate appropriate services.*

#### **EXTERNAL AGENCIES TO FILE COMPLAINTS OF SEXUAL MISCONDUCT**

- **Office for Civil Rights (OCR)**  
US Department of Education  
Main Office: (800) 421-3481  
Main Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
New York Office: (646) 428-3800  
New York Email: [OCR.NewYork@ed.gov](mailto:OCR.NewYork@ed.gov)  
New York Location: 32 Old Slip – 26<sup>th</sup> Floor, Manhattan
- **New York State Division of Human Rights**  
One Fordham Plaza – 4<sup>th</sup> Floor, Bronx  
Main Number, Toll Free: (888) 392-3644  
TTD/TTY Number: (718) 741-8300  
Email: [info@dhr.ny.gov](mailto:info@dhr.ny.gov)
- **New York City Commission on Human Rights**  
Phone: Call 311 or (212) 416-0197 for locations and services
- **United States Equal Opportunity Employment Commission (EEOC)**  
Main Number: (800) 669-4000  
TTY Number: (800) 669-6820  
New York office location: 33 Whitehall Street – 5<sup>th</sup> floor, Manhattan

## **APPENDIX C**

### **DECORUM POLICY FOR TITLE IX GRIEVANCE PROCESS HEARINGS**

#### **I. Rules of Decorum**

The following Rules of Decorum are to be observed in the hearing and applied equally to all parties (meaning the complainant and respondent) and advisors:

1. Questions must be conveyed in a neutral tone.
2. Parties and advisors will refer to other parties, witnesses, advisors, and institutional staff using the name and gender used by the person and shall not intentionally mis-name or mis-gender that person in communication or questioning.
3. No party may act abusively or disrespectfully during the hearing toward any other party or to witnesses, advisors, or decision-makers.
4. While an advisor may be an attorney, no duty of zealous advocacy should be inferred or enforced within this forum.
5. The advisor may not yell, scream, badger, or physically “lean in” to a party or witness’s personal space. Advisors may not approach the other party or witnesses without obtaining permission from the Hearing Officer.
6. The advisor may not use profanity or make irrelevant personal attacks upon a party or witness. Questions are meant to be interrogative statements used to test knowledge or understand a fact; they may not include accusations within the text of the question.
7. The advisor may not ask repetitive questions. This includes questions that have already been asked by the Hearing Officer, the advisor in cross-examination, or the party or advisor in direct testimony. When the Hearing Officer determines a question has been “asked and answered” or is otherwise not relevant, the advisor must move on.
8. Parties and advisors may take no action at the hearing that a reasonable person in the shoes of the affected party would see as intended to intimidate that person (whether party, witness, or official) into not participating in the process or meaningfully modifying their participation in the process.

#### **II. Warning and Removal Process**

The Hearing Officer shall have sole discretion to determine if the Rules of Decorum have been violated. The Hearing Officer will notify the offending person of any violation of the Rules.

Upon a second or further violation of the Rules, the Hearing Officer shall have discretion to remove the offending person or allow them to continue participating in the hearing or other part of the process.

Where the Hearing Officer removes a party's advisor, the party may select a different advisor of their choice, or accept an advisor provided by the institution for the limited purpose of cross-examination at the hearing. Reasonable delays, including the temporary adjournment of the hearing, may be anticipated should an advisor be removed. A party cannot serve as their own advisor in this circumstance.

The Hearing Officer shall document any decision to remove an advisor in the written determination regarding responsibility.

For flagrant, multiple, or continual violations of this Rule, in one or more proceedings, advisors may be prohibited from participating in future proceedings at the institution in the advisor role on a temporary or permanent basis. Evidence of violation(s) of this agreement will be gathered by the Title IX Coordinator, the Vice President for Student Affairs for cases involving students, Director of Human Resources for cases involving employees, or their designees. The advisor accused may provide an explanation or alternative evidence in writing for consideration by the Vice President for Student Affairs for cases involving students, or Director of Human Resources for cases involving employees, or their designees. Such evidence or explanation is due within fifteen (15) calendar days of receipt of a notice of a charge of re-disclosure or improper access to records. There shall be no right to a live hearing, oral testimony, or cross-examination. The Vice President for Student Affairs for cases involving students or Director of Human Resources for cases involving employees, or their designees shall consider the evidence under a preponderance of the evidence standard and issue a finding in writing and, if the finding is Responsible, shall include a Sanction. The finding shall be issued in writing to all Parties and Advisors (if there is a current case pending) within thirty (30) days unless extended for good cause. There is no appeal of this finding. In the event that an Advisor is barred permanently or for a term from serving in the role as Advisor in any future matter, they may request a review of that bar from the Vice President for Student Affairs for cases involving students or Director of Human Resources for cases involving employees or their designees no earlier than three-hundred and sixty-five (365) days after the date of the findings letter.

### **III. Relevant Questions Asked in Violation of the Rules of Decorum**

Where an advisor asks a relevant question in a manner that violates the Rules, such as yelling, screaming, badgering, or leaning-in to the witness or party's personal space, the question may not be deemed irrelevant by the decision-maker simply because of the manner it was delivered. Under that circumstance, the decision-maker will notify the advisor of the violation of the Rules, and, if the question is relevant, will allow the question to be re-asked in a respectful, non-abusive manner by the advisor (or a replacement advisor, should the advisor be removed for violation of the Rules). *See, 85 Fed. Reg. 30331.*