

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

MARIST

Contents

Introduction	4
Purpose	4
Scope	4
Contact Information	5
Nondiscrimination Statement	6
Accommodation of Disabilities	6
Important Definitions	8
Sex or Gender-Based Discrimination and Harassment and Other Civil Rights Offenses	9
Prohibited Conduct.....	9 - 14
Multi-Party Situations... ..	14
Retaliation	14
Other Important Definitions and Terms Related to this Policy.....	15
Incapacitation	16
Policy Expectations with Respect to Consensual Relationships.....	17
Reporting Prohibited Conduct under this Policy	17
Confidential Reporting	18
Non-Confidential Reporting.....	19
Amnesty	19
Procedure for Resolving Civil Rights Offenses Unrelated to Sex or Gender	20
• Informal Process (Conflict Resolution)	21
• Formal Process (Investigation)	21
Procedure for Resolving Complaints of Sexual Harassment and Other Civil Rights Offenses involving Sex and/or Gender.....	22
• Supportive Measures	23
• Emergency Removal	23
• No Contact Orders.....	24
• Orders of Protection.....	24
• Advisors... ..	25
• Formal Resolution: Grievance Process.....	26
• Making a Formal Complaint	26
• Initial Assessment.....	26
• Dismissal & Reclassification of Formal Complaints.....	27
• Informal Resolution.....	28
• Formal Resolution - Grievance Procedure.....	28

- Notice of Investigation 29
- Hearing for All Alleged Sex- and Gender-Based Misconduct..... 31
- Transcript Notations35
- Respondent’s Withdrawal or Resignation During Investigation or Hearing Process.....36
- Appeals..... 36

Failure to Complete Sanctions/Comply with Remedies 37

Records..... 38

Legal Challenges 38

Revision..... 38

NCAA Policy to Combat Sexual Violence.....39

Student Bill of Rights..... 41

Student Sanctions 35 & 42-44

Employee Sanctions.....35

National Science Foundation Notification.....45 - 46

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

Introduction

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

Purpose

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

- The College will take steps to prevent the behavior, to prevent any recurrence, and take appropriate action to remedy the effects of the behavior;
- The College will provide for the prompt and equitable resolution of allegations and complaints brought by the Complainant (the individual who believes they were harmed) and the Respondent (the individual accused of a policy violation).

Scope

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

This policy applies to behaviors that take place on the campus and at College-sponsored/controlled events. Behaviors cited in this policy that occur off-campus, on/at private property, online, including calls, texts, emails, and social media, or business travel, even if they occur on personal devices or during non-work hours, may still be addressed when the Title IX Coordinator or other designated official determines that the off-campus conduct affects a substantial College interest. A substantial College interest is defined to include:

- Any action that constitutes criminal offense as defined by Federal or New York State law. This includes, but is not limited to, single or repeat violations of any local, state or federal law committed in the vicinity where the College is located;
- Any situation where it appears that the accused individual may present a danger or threat to the health or safety of self or others;
- Any situation that significantly infringes upon the rights, property or achievements of self or others or creates significant disruption, and/or
- Any situation that is detrimental to the educational interests of the College.

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

Contact Information

For internal inquiries regarding the enclosed policies and procedures or to report sexual harassment, please contact:

Kelly Yough

Director of Equity and Title IX Coordinator
(845) 575-2210
titleix@marist.edu

William Meyer

Title IX Investigator
845-575-2214
titleix@marist.edu

Eliza Benfer

Title IX Outreach Coordinator
845-575-2216
titleix@marist.edu

External inquiries may be made to:

Office for Civil Rights (OCR)
U.S. Department of Education 400 Maryland Avenue, SW
Washington, DC 20202-1100
Telephone: (800) 421-3481
Fax: (202) 453-6012
TDD: (800) 877-8339
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

Local OCR office contact information:

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

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

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

Equal Employment Opportunity Commission (EEOC)

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

Last Updated fall 2023

Nondiscrimination Statement

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

This policy covers nondiscrimination in employment and in access to educational opportunities. Any member of the campus community, guest or visitor who acts to deny, deprive or limit the educational, employment, housing, social access, financial aid and scholarship, benefits and/or other services and opportunities of any member of the campus community or its visitors and guests on the basis of their actual or perceived membership in the protected classes listed above is in violation of College policy. When brought to the attention of the College, any such discrimination will be appropriately remedied by the College according to outlined policy and procedures.

Accommodation of Disabilities

The College is committed to full compliance with the Americans With Disabilities Act Amendments Act of 2008 (ADAA) and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws pertaining to individuals with disabilities. Under the ADAA, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity. The ADAA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the institution whether qualified or not. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, or caring for oneself.

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

Students with Disabilities

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

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

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

Employees with Disabilities

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

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

Academic Freedom

The College's harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive subject matters protected by academic freedom.

Important Definitions

Institution

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

Privacy

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

Complainant

The term "Complainant" will encompass the terms victim, survivor, complainant, claimant, or witness with victim status.

Respondent

The term, "Respondent" will mean a person accused of a violation who has entered the College's judicial or conduct process.

Title IX Coordinator

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

Sex

Sex refers to a person's biological status and is typically assigned at birth, usually on the basis of external anatomy.

Gender

Gender is often defined as a social construct of norms, behaviors and roles that vary between societies and over time.

Gender Identity

Gender identity is one's own internal sense of self and their gender.

Gender Expression

Gender expression is how a person presents gender outwardly, through behavior, clothing, voice, or other perceived characteristics.

Cisgender

Cisgender describes a person whose gender identity aligns with the sex they were assigned at birth.

Transgender

Transgender describes a person whose gender identity differs from sex assigned at birth.

Nonbinary

Nonbinary is a term that can be used by people who do not describe themselves or their genders as fitting into the categories of man or woman. A range of terms are used to refer to these experiences; nonbinary and genderqueer are among the terms that are sometimes used.

Sex or Gender-Based Discrimination and Harassment and Other Civil Rights Offenses

DEFINITIONS OF PROHIBITED CONDUCT UNDER THIS POLICY

Gender-Based Misconduct

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

Sexual Harassment

The U.S. Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of New York regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice. Marist College has adopted the following definition of sexual harassment, which conforms to federal regulations under Title IX, in order to address the unique environment of an academic community.

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

Conduct on the basis of sex or that is sexual that satisfies one or more of the following:

- **Quid Pro Quo:**
 - an employee of Marist College,
 - conditions, implicitly or explicitly, the provision of an aid, benefit, or service of the recipient,
 - on an individual's participation in unwelcome sexual conduct.

- Sexual Harassment:
 - unwelcome conduct,
 - determined by a reasonable person,
 - to be so severe, and
 - pervasive, and,
 - objectively offensive,
 - that it effectively denies a person equal access to Marist College’s education program or activity.¹

- Sexual assault, defined as:
 - Sex Offenses, Forcible:
 - Any sexual act² directed against another person,
 - without the consent of the Complainant,

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

² A “sexual act” is specifically defined to include one or more of the following:

Forcible Rape:

- Penetration,
- no matter how slight,
- of the vagina or anus with any body part or object, or
- oral penetration by a sex organ of another person,
- without the consent of the Complainant.

Forcible Sodomy:

- Oral or anal sexual intercourse with another person,
- forcibly,
- and/or against that person’s will (non-consensually), or
- not forcibly or against the person’s will in instances in which the Complainant is incapable of giving consent because of age[#] or because of temporary or permanent mental or physical incapacity.

Sexual Assault with an Object:

- The use of an object or instrument to penetrate,
- however slightly,
- the genital or anal opening of the body of another person,
- forcibly,
- and/or against that person’s will (non-consensually),
- or not forcibly or against the person’s will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Fondling:

- The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or temporary or permanent mental incapacity, for the purpose of sexual gratification.

- Sex Offenses, Non-forcible: defined unlawful, non-forcible sexual intercourse:
 - **Incest:** non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - **Statutory Rape:** non-forcible sexual intercourse with a person who is under the statutory age of consent of 17.

- Dating Violence, defined as:
 - The term “dating violence” means violence committed by a person--(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and(B) where the existence of such a relationship shall be determined based on a consideration of the following factors:(i) The length of the relationship. (ii) The type of relationship (iii) The frequency of interaction between the persons involved in the relationship.
 - Dating violence can be a single act or a pattern of behavior in relationships.
 - Dating violence does not include acts covered under the definition of domestic violence.

- Domestic Violence, defined as:
 - violence,
 - on the basis of sex,
 - committed by a current or former spouse or intimate partner of the Complainant,
 - by a person with whom the Complainant shares a child in common, or
 - by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
 - by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of New York, or
 - by any other person against an adult or youth Complainant who is protected from that person’s acts under the domestic or family violence laws of New York.
 - To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

- Stalking, defined as:
 - Engaging in a course of conduct,
 - on the basis of sex,
 - directed at a specific person, that
 - would cause a reasonable person to fear for the person’s safety, or
 - the safety of others; or
 - Suffer substantial emotional distress.
 - For the purposes of this definition
 - Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.
 - Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
 - Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

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

The College considers sexual assault to be one of the most serious violations, and therefore imposes the most severe sanctions, typically suspension or expulsion for students and termination for employees.

Other Civil Rights Offenses

In addition to the forms of sexual harassment described above, which are covered by Title IX, Marist College additionally prohibits the following offenses as forms of misconduct and discrimination outside of Title IX when the act is based upon the Complainant’s actual or perceived membership in a protected class.

- Sexual Exploitation, defined as: taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this policy. Examples of Sexual Exploitation include, but are not limited to:
 - Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
 - Invasion of sexual privacy.

- Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of revenge pornography.
 - Prostituting another person
 - Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the infection
 - Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
 - Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections
 - Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
 - Knowingly soliciting a minor for sexual activity
 - Engaging in sex trafficking
 - Creation, possession, or dissemination of child pornography
- Threatening or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct based on sex, gender, or gender identity which threatens or endangers the health or safety of any person;
 - Sexual Exhibitionism - when a person engages in sexually explicit activity in public spaces on campus or to be viewed by the public while on campus using computer hardware or software.
 - Sex or Gender-Based Discrimination, that deprives, limit, or deny other members of the community of educational or employment access, benefits, or opportunities;
 - Sex or Gender-Based Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm;
 - Sex or Gender-Based Hazing, defined as:
 - Acts likely to cause physical or psychological harm or social ostracism to any person within the College community,
 - when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the prohibition of hazing found in the Student Code of Conduct),
 - on the basis of actual or perceived membership in a protected class;
 - Hazing is also illegal under New York law and prohibited by College policy.
 - Sex or Gender-Based Bullying, defined as:
 - Repeated and/or severe,

Last Updated fall 2023

- aggressive behavior, and
- likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally
 - Bullying and cyber bullying is defined further in the prohibition of bullying found in the Student Code of Conduct
- Grooming, defined as:
 - manipulative behaviors that the abuser uses to gain access to a potential victim, coerce them to agree to the abuse, and reduce the risk of being caught.
 - While these tactics are used most often against younger kids, teens and adults are also at risk.
 - Grooming can take place online or in-person.
- Any other College rules, when a violation is motivated by real or perceived sex, gender, gender identity, and/or gender expression may be pursued using this policy and process.

The College reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination of employment, for harassment, discrimination, or an act of in violation of this policy, including gender-based offenses of intimate partner or relationship (dating and/or domestic) violence, sexual assault, and stalking based on the facts and circumstances of the particular grievance.

Retaliation

Retaliation is defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity. Adverse action need not be job-related or occur on the campus or in the workplace (i.e. threats of violence outside of work hours) to constitute unlawful retaliation. Retaliation against an individual for alleging harassment, supporting a party or for assisting in providing information relevant to a claim of harassment is a serious violation of College policy. Acts of alleged retaliation involving employees may be reported to the Title IX Coordinator. Allegations of retaliation involving students may be reported to the Director of Student Conduct. The College is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation. In instances where the alleged harassment does not turn out to rise to the level of a violation of law, the individual is protected from retaliation if the person had a good faith belief that the practices violated College policy and/or were unlawful. In turn, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.

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

Other Important Definitions and Terms Related to this Policy

Affirmative Consent

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

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

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

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

Minors

In New York State, a minor (meaning a person under the age of 17 years) cannot consent to sexual activity. This means that sexual contact by an adult with a person younger than 17 years old is a crime, as well as a violation of this policy, even if the minor wanted to engage in the act. The College adopts this prohibition of sexual activity by adults with minors on all College property and at any and all College-sponsored activities or functions outside of New York regardless of out-of-state laws.

Bystander

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

Coercion: Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Confidentiality

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

Clery Reporting

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

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

Incapacitation

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

- Incapacitation may be associated with an individual lacking consciousness; being asleep; being involuntarily restrained; having a disability that impedes consent; or if an individual otherwise cannot consent due to other forms of helplessness. Specifically, under New York State law, a person under the age of 17 lacks the capacity to give consent.
- Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
 - How drugs and alcohol affect consent:
 - The impact of alcohol and other drugs varies from person to person. Warning signs that a person may be incapacitated or approaching incapacitation as a result of alcohol or drug use may include, but are not limited to: slurred or incomprehensible speech, vomiting, unsteadiness, combativeness, or emotional volatility.
 - Individuals should be aware of, and carefully consider, the potential consequences of the use of alcohol or drugs. Alcohol and drugs can lower inhibitions and create an atmosphere of confusion over whether consent is freely and affirmatively given.
- Whether sexual activity with an incapacitated person constitutes gender-based misconduct may depend on whether the Respondent knew or should have known of the Complainant’s incapacitation based on objectively and reasonably apparent indications when viewed from the perspective of a sober, reasonable person in the Respondent’s position.
- Being intoxicated, impaired, or incapacitated by alcohol or other drugs is never an excuse

Last Updated fall 2023

for committing a policy violation and does not diminish anyone's responsibility to obtain informed and freely-given consent.

- The use of alcohol or other drugs never makes someone at fault for experiencing gender-based misconduct.

Witness

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

Policy Expectations with Respect to Consensual Relationships

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

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

Reporting Prohibited Conduct Under This Policy

The College is committed to the highest ethical and professional standards of conduct and to the safety and well-being of all members of our community. To achieve this goal, the College expects and relies on each member of the community to report actual or suspected violations of federal or state laws, violations of College policy or procedures, or other suspected wrongdoings.

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

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

Kelly Yough

Director of Equity and Title IX Coordinator
(845) 575-3799
titleix@marist.edu

Reports can be made:

Via phone at 845-575-3799

Via e-mail at titleix@marist.edu

Via online at https://cm.maxient.com/reportingform.php?MaristCollege&layout_id=40

Via mail at 3399 North Road, Title IX, Marist College, Poughkeepsie, NY12601

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

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

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

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

Confidential Reporting

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

On-Campus Resources

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

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

These employees will submit anonymous statistical information for Title IX tracking and Clery Act purposes unless they believe it would be harmful to their client, patient or parishioner.

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

Off-Campus Counseling and Advocacy Resources

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

Law Enforcement Resources

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

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

Non-Confidential Reporting

Marist College employees who are not listed in the Confidential Reporting section of this Policy are required to report disclosures of alleged Policy violations to the Title IX Coordinator. This should be done as promptly as possible.

Student Alcohol and Drug Use Amnesty Policy When Reporting Sexual Misconduct

The health and safety of every student at the College is of utmost importance. Marist College recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including, but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The College strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to institutional officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to College officials or law enforcement will not be subject to disciplinary action under the College's Code of Conduct for violations of alcohol and/or drug abuse occurring at or near the time of the commission of the domestic violence dating violence, stalking, or sexual assault.

Cases of Continual Threat and Timely Warning Obligations

The College takes all reports and formal complaints seriously and acts to resolve all reported incidents through these procedures. In cases where the reporting individual requests confidentiality and the circumstances allow the College to honor that request, the College will offer interim supports and remedies to the individual and the community, but will not otherwise pursue formal action. In cases indicating pattern, predation, threat and/or violence, the College will be unable to honor a request for confidentiality. Reporters and Complainants should be aware that College administrators may be required to issue timely warnings for incidents reported to them that pose a substantial threat of bodily harm or danger to members of the campus community. The College will make every effort to ensure that the harmed individual's name and other identifying information are not disclosed, while still providing enough information for community members to make decisions regarding their safety. Any information about the resolution will not be released by the College until the conclusion of the resolution process, as permitted or required by law.

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

Any disclosure made in the course of institutional research, classroom discussions or writing assignments or events, such as Take Back the Night or speak outs, is not considered notice to the College unless the individual alleging harm wishes a report to be made by contacting an individual required to report disclosures as outline on page 18. Such information will be used to inform campus climate and educational efforts, generally.

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

Procedure for Resolving Civil Rights Offenses Unrelated to Sex or Gender

The procedure set forth below applies to the resolution of alleged "other civil rights offenses" as defined in this policy when the alleged offense is unrelated to sex or gender.

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

All complaints of other civil rights offenses unrelated to sex or gender made against faculty-Respondents will be forwarded to the Associate Dean for Academic Affairs; complaints against employee-Respondents will be forwarded to the Vice President for Human Resources and/or the Director of Employee Relations (the "Designated Human Resources Official"). The Designated Human Resources Official or designee will review the complaint and determine whether the

conduct as alleged amounts to a violation of this policy and will contact the Complainant to inform the Complainant of this determination no more than three (3) business days after receiving the complaint.

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

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

Informal Process (Conflict Resolution)

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

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

Formal Process (Investigation)

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

- Notify them of a formal investigation into the conduct alleged;
- Provide information as to the behavior that is alleged;
- Inform them of which provisions of the Policy the behavior under investigation may violate;
- Inform them of possible sanctions;
- Notify them that they will be provided the time and place for all meetings in relation to the process

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

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

The designated college official's determination is final.

Procedure for Resolving Complaints of Sexual Harassment and Other Civil Rights Offenses involving Sex and/or Gender

The College will take measures deemed necessary to appropriately respond to all reports of sexual harassment and other civil rights offenses involving sex and/or gender. Not all forms of the prohibited conduct described will be deemed equally serious offenses, and the College reserves the right to impose different, yet appropriate measures, depending on the severity of the offense. The Complainant may choose to pursue an informal or formal resolution. Informal resolution will never be used to remedy any acts of violence.

When the College receives notice of alleged, prohibited conduct occurring either on or off College property, the College will provide the reporting individual with written materials outlining their rights and options for support and resources available both on and off campus. An individual may report an incident to either the College or law enforcement, or both simultaneously. The College's process will run concurrently with the criminal justice process. However, the filing of a formal complaint of sexual misconduct under this policy is independent of any criminal investigation or proceeding. The College will not wait for the conclusion of any criminal investigation or proceedings to commence its own investigation or to take any necessary interim measures to protect the Complainant and the rest of the College community. The College, however, may temporarily delay its investigation to enable law enforcement to gather evidence and to engage in a preliminary investigation of sexual misconduct matters that may also violate the state criminal code. A delay in the College process will not exceed more than ten (10) business days unless there is a justified specific request by law enforcement to do so. Both parties will be notified in the event that the College needs to delay its process.

There may also be times when the Title IX Office and/or another designated office such as the Office of Safety and Security may contact the police regarding the nature of an alleged

incident. Regardless, it is always the Complainant's decision as to whether or not to cooperate with any police and/or College investigation.

When the College receives notice, the Complainant has the right to have emergency access to the Title IX Coordinator or other appropriate official trained in interviewing victims of sexual assault. The individual will be provided information regarding options to proceed, and, where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible, and explaining that the criminal justice process utilizes different standards of proof and evidence and that any questions about whether a specific incident potentially violates the penal code can be addressed by a law enforcement liaison that the College can help to coordinate. Such official will explain whether or not they can offer the reporting individual confidentiality or privacy and inform them of any other potential reporting options.

Complainants will be notified that Marist College offices and employees who cannot guarantee confidentiality will absolutely maintain privacy to the greatest extent possible. The information provided to a non-confidential resource will be relayed only as necessary to the Title IX Office to investigate and/or seek a resolution.

Supportive Measures

Parties have a right to access available supportive measures both on and off campus. These supportive measures include but are not limited to no contact orders, providing counseling and/or medical services, transportation assistance, academic support, adjustments in the living arrangements, providing a campus escort, academic or work schedule and assignment modifications, safety planning, referral to campus and community support resources. These services are available whether or not a college investigation and resolution by hearing or informal process is deemed warranted and pursued; and will be non-punitive in nature and administered in a manner that does not unreasonably burden either party.

Emergency Removal of Student Respondents

Once a formal, signed complaint is received, the Title IX Coordinator or designee will conduct an individualized safety and risk analysis to determine if there is an imminent, ongoing threat to the physical health or safety of any person arising from the sexual misconduct allegations. If the individualized safety and risk analysis determines there is an immediate and ongoing threat to the physical health or safety of any student, including the accused student, or another individual justifies removal, the accused or student can be removed during the Title IX process. This is the case regardless of the severity of the allegations. In cases where a Title IX complaint is re-classified to fall under NY State Education Law 129 B, the same process is followed.

After determining an accused or respondent student is an immediate threat to the physical health or safety of an individual, which can include to him or herself, the Title IX Coordinator, or designee will provide written notice of the emergency removal to the accused student. This notice will contain: (1) the date the removal is set to begin, (2) the reason for the emergency removal, (3) the consequences of non-compliance, and (4) how to appeal the decision.

The complaint is notified as well. During the Emergency Removal, the accused may be denied access to College housing and/or the College campus/facilities/events. As determined by the Title IX Coordinator/designee in collaboration with the appropriate administrative officer, this restriction can include classes and/or all other College activities or privileges for which the student or employee might otherwise be eligible. Alternative coursework options may be pursued to ensure as minimal an impact as possible on the accused student. If the accused identifies him/herself as a student having a disability, it is the responsibility of the respondent to notify the Title IX Coordinator upon receipt of the notice of Emergency Removal. The Title IX Coordinator or designee will then work with the accused and the Office of Accommodations and Accessibility to assist with the required and necessary accommodations for the period of the Emergency Removal.

The Accused and Complainant may request an immediate post-removal review of the terms of the removal, including potential modification, and will be allowed to submit information in support of their request. The accused or respondent student must provide written notice of the intent to appeal, which shall include the substance of the appeal, within (3) business days of receiving the notice of removal. The burden of proof is on the accused or respondent student to show that the removal decision was incorrect.

Interim Actions Regarding Employees

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

No Contact Orders

After a Complainant reports alleged sexual misconduct, the College may where necessary and/or requested and deemed necessary institute a no contact order between the Complainant and the Respondent. A no contact order is a directive prohibiting contact between or among designated individuals through any means, direct or indirect, including personal contact, email, telephone, text message, social media, or by the means of a third party. No contact orders are typically mutual.

Both parties will receive the directive in writing. If a Complainant and Respondent observe each other in the same place, it is the responsibility of the Respondent to leave the area immediately and without contacting the Complainant unless leaving the location restricts the Respondent's ability to participate in an educational program or activity. An individual who believes that a violation of the no contact order has occurred needs to report the violation to the Title IX Coordinator, Deputy, or designee. Individuals who violate a no contact order are subject to the full range of further disciplinary action, such as a charge of retaliation and violation of the no contact order.

Both the Complainant and Respondent will, upon request and consistent with College policies and procedures, be afforded a prompt review reasonable under the circumstances, of the need and terms of a No Contact Order, including potential modifications. Both parties are able to submit evidence in support of their request. The Title IX Coordinator, Deputy, or designee will determine within a reasonable timeframe whether there will be any modification.

Orders of Protection Issued by Criminal or Civil Courts

Separate from a no contact order issued by the College, a Complainant can seek an

Last Updated fall 2023

order of protection from both the criminal or civil (family) court system. At the request of the Complainant, the Title IX Office will place the Complainant in touch with an advocate from Family Services who will be available to assist in obtaining a government court issued order of protection (or equivalent restraining order if outside New York State) and explain the consequences of violating such an order, including but not limited to arrest, additional conduct charges, and interim suspension. Both the Complainant and Respondent have the right to receive a copy of the order of protection when received by the College. Either the Title IX Coordinator, Deputy, or designee, or an advocate from Family Services will be available to explain the order and answer any questions about it. If such order is violated, an individual may contact the Title Office or College Security to receive assistance in effecting an arrest.

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

Advisors

The Title IX Coordinator or designee will notify both the Complainant and Respondent of their right to use one advisor of their choice (including, but not limited to, an attorney, parent/guardian, or advocate assigned from Family Services) who can assist, support, and advise them during the grievance process. **The choice whether or not to invite an advisor is solely that of the complainant and respondent during any meeting, including interviews. A party is required to have an advisor during a Title IX hearing.** If a party does not have an advisor, they must inform the Title IX Coordinator or designee at least five (5) business days prior to a scheduled hearing. In the event a party does not have an advisor for a hearing, the Title IX Coordinator will assign one to the party. Complainants and Respondents are solely responsible for meeting advisors and ensuring advisors understand their role in the grievance process.

Advisors may not participate in the conduct process in any other capacity in reference to the same incident, including, but not limited to, serving as a witness, co-complainant, or co-respondent. An advisor may not conduct an interview(s) or contact other parties or witnesses during the College's investigation process. If an advisor's conduct is not consistent with these guidelines, the advisor may be excluded from the process. These limitations on the advisor's role do not prohibit a party from gathering and/or offering evidence in their own behalf during this process. The availability of an advisor to attend an interview, conduct meeting, or hearing will not interfere with or delay the proceedings. An advisor may not advocate on behalf of a party. All communication regarding the substance of an investigation, including but not limited to, scheduling meetings, must be communicated by the party. Advisors or parties may only direct procedural questions to the Title IX Coordinator.

During a Title IX hearing, it is the responsibility of the advisors to cross-examine the other party(ies) and witnesses. If a complaint is re-categorized as a NY State 129 B complaint, parties involved in the complaint are responsible for cross-examination; questions are asked through the Hearing Chair. Advisors are confined to the limitations outlined in the Hearing Procedures section of this Policy.

Formal Resolution: Grievance Process

Making a Formal Complaint

While any individual may report alleged sexual harassment to the Title IX Office, a signed formal complaint may only be submitted by the individual alleging they have been subjected to sexual harassment (the “Complainant”). Regardless of the source of the report received, the Title IX Coordinator or designee will contact any person allegedly subjected to sexual harassment to provide information regarding the supportive measures available to them under this policy (See page 23 for supportive measures) and determine whether they wish to submit a formal complaint.

A signed formal complaint begins the Title IX process. When a formal complaint is received, the Title IX Coordinator or designee automatically sends a written notice of allegations to the accused. The Title IX Office cannot compel individuals to submit a formal complaint for resolution under this procedure. However, in some instances, the Title IX Coordinator may sign a formal complaint based on the information received if the individual allegedly harmed does not wish to file a formal complaint. Some circumstances may require a recipient (via the Title IX Coordinator) to initiate an investigation and adjudication of sexual harassment allegations in order to protect the recipient’s educational community or otherwise avoid being deliberately indifferent to known sexual harassment. The complainant need not participate in the process further, but will receive all notices issued under this Policy and Process.

Formal complaints are subject to review.

Initial Assessment

Following receipt of a complaint of an alleged violation of this Policy, the Title IX Coordinator³ engages in an initial assessment, which is typically one to five business days in duration. The steps in an initial assessment can include:

- If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
 - If they do not wish to make a formal complaint, the Title IX Coordinator will determine whether to initiate a formal complaint because a risk assessment indicates a compelling threat to health and/or safety of an individual and/or the College community.
- The Title IX Coordinator will contact the Complainant to offer supportive measures.
- The Title IX Coordinator will work with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator will work with the Complainant to determine whether the Complainant prefers:
 - Supportive measures only; this step can occur without a formal complaint.
 - Informal resolution with or without supportive measures
 - Formal resolution with or without supportive measures
 - If the Complainant prefers supportive measures, the Title IX Coordinator will

- work with the Complainant to identify their wishes and then seeks to facilitate implementation.
 - If the Complainant prefers an informal resolution option, the Title IX Coordinator will assess whether the complaint is suitable for informal resolution and whether the Respondent agrees to the process.
- If a Formal Grievance Process is preferred, the Title IX Coordinator will determine if the conduct alleged falls within the scope of Title IX.

-
- If the Conduct alleged does fall within the scope of Title IX, the Title IX Coordinator will initiate the formal investigation and grievance process
 - If the conduct alleged does not fall within the scope of Title IX, the Title IX Coordinator will “dismiss” the complaint as an alleged violation of Title IX’s and may reclassify the complaint pursuant to the procedures set forth in this section as potential violations of this policy, assuming that the allegations, if true, would constitute prohibited sexual misconduct under NY State Education Law Article 129 A and B, and/or Marist College policy. Note: The review and reclassification or dismissal of formal complaints by the Title IX Coordinator can take place before an investigation begins or after the investigation is complete.

Dismissal & Reclassification of Formal Complaints

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

Mandatory Dismissal

Formal Title IX of alleging sex or gender-based misconduct **must be** dismissed when:

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

However, even if certain allegations are subject to dismissal for purposes of Title IX, the College may continue to process the allegations pursuant to the procedures set forth in this section as potential violations of this policy, assuming that the allegations, if true, would constitute prohibited sexual misconduct under NY State Education Law Article 129 A and B and/ or Marist College policy.

Discretionary Dismissal

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

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

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

Parties will receive written notice of any dismissal, including instructions on how to appeal a dismissal decision or the next steps in the grievance process in cases where the dismissal is only for purposes of Title IX categorization. The criteria to submit an appeal can be found below.

Complaints classified as Title IX allegations that are not dismissed (including those that are reinstated following an appeal of a dismissal) will be resolved under the procedure set forth below.

Informal Resolution

Except in complaints involving allegations by a student-Complainant against employee-Respondents or in complaints involving allegations of violence, the College may offer an informal resolution process where the College deems such resolution appropriate. This may include processes such as, but not limited to, mediation. A party may not be required to participate in an informal resolution process and an informal resolution process may not be offered unless a formal, signed complaint is filed. Such processes will be conducted by trained individuals.

Informal resolutions may not involve a full investigation, and may occur at any time prior to a determination of responsibility under the formal resolution process. Informal resolution will not be offered for cases where an employee is the Respondent and the Complainant is a student.

The College will obtain written consent from all parties. Informal resolution processes are not a condition of enrollment/continued enrollment or employment/continued employment. The College will provide to the parties a written notice disclosing the allegations, the requirements of the informal resolution process. While sanctions cannot be issued by the College as a result of the conflict resolution process, the parties will agree appropriate remedies. Failure to abide by the accord can result in appropriate responsive actions. Informal resolution will not be a mechanism used to address reports of sexual violence or coerced/forced behavior of any kind or if there is evidence of pattern of misconduct or a perceived threat of further harm to the community.

At any time during an informal resolution process prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.

Formal Resolution - Grievance Procedure

Investigation of a Formal Complaint

Title IX Coordinator or designee will facilitate the grievance process for all sex and gender-based complaints, including those sex and gender complaints that also allege misconduct on the basis of other protected classes

Notice of Investigation

When a signed, formal complaint is filed, the Title IX Coordinator or designee will appoint a trained investigator(s). Parties to allegations will receive notification of investigation in writing; such notice will occur as soon as practicable, but no more than ten (10) days after the institution receives a Formal Complaint, if there are no extenuating circumstances. The parties will be notified by their institutional email accounts if they are a student or employee. If a party is not affiliated with the College, written communication will be delivered in one of the formats provided to the College by the party. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. The institution will provide sufficient time for the parties to review the Notice of Investigation and allegation before any initial interview.

The Notice of Investigation will include the following information:

- The identities of the parties involved, if known.
- The specific section of the policy allegedly violated with a hyperlink to the College's Discrimination, Harassment, and Sexual Misconduct Policy.
- The precise conduct allegedly constituting the potential violation; potential violations can be updated during the investigation process as new information is gathered.
- The date and location of the alleged incident(s), if known.
- Reiterate their right to bring an advisor of choice to their scheduled meetings.
- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- A statement that the parties may inspect and review evidence gathered during the investigation.
- Reiterate that Marist College policy prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

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

Evidence Gathered During the Investigation Process:

The sole purpose of the investigation is to gather information to be used in the determination as to whether the alleged conduct violates College policy. It is the responsibility of the College's investigators to gather sufficient relevant evidence for the decision-makers to reach a fair and impartial determination as to whether a policy violation occurred. The investigation will include asking both the Complainant and Respondent for information, including names of factual witnesses they would like to be contacted regarding the allegations made. Character witnesses will not be interviewed during an investigation. Investigators will make all reasonable efforts to contact all relevant and material witnesses and parties but cannot guarantee that witnesses or parties will respond to requests for interviews nor appear for any interview time scheduled. Knowingly making false statements or knowingly providing false information during the

grievance process is a serious violation of this Policy. Individuals who knowingly provide false information will be subject to discipline as outlined in the relevant handbook/code. Allegations of false information will be referred to the appropriate school official.

In addition to interviews of parties and relevant witnesses, the investigation will include gathering of any relevant physical, documentary, or other evidence.

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

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

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

Audio & Video Recordings Prohibited

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

Investigators gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report. Prior to the conclusion of the investigation, investigators provide to the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the College does not intend to rely in reaching a determination, for review for ten (10) calendar days so that each party may meaningfully comment and respond to the evidence. The parties may elect to waive the full ten days. Each copy of the materials shared will be watermarked on each page with confidential. Parties involved in the complaint are entitled to one, ten (10) calendar day review period of the investigative report. Investigators will review comments submitted and may incorporate them into the report. Investigators may respond to the comments submitted by parties in the report. Investigators submit the finalized report, including any revisions, to the Title IX Coordinator or designee who coordinates the implementation of the hearing. Parties who wish to comment on any new information that was added by the investigator to the final report may submit comments, in writing, to the Title IX Coordinator within five (5) calendar days of the scheduled hearing. If deemed relevant by the Title IX Coordinator, all parties involved in the complaint, and the panel, will receive a copy prior to the hearing.

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

Standard of Evidence

The College uses the “Preponderance of Evidence” standard in determining whether the facts support a finding that it is more likely than not that the alleged misconduct occurred or did not occur.

Investigation Timeline

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

Hearing for All Alleged Sex-and Gender-Based Misconduct

Hearings may be conducted with all parties physically present in the same geographic location, usually on campus, or, at the College’s discretion or when required by law, any or all parties, witnesses, and other participants may choose to appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. In cases involving Title IX covered Sexual Harassment, the parties and Hearing Panel members will receive the investigators’ final report and a notification of charges at least ten (10) calendar days prior to the scheduled hearing.

In non-Title IX covered Sexual Harassment complaints, all parties will be notified of the charges by the Title IX Coordinator or designee at least three (3) business days prior to the hearing and that they may schedule an appointment with the Title IX Office prior to the scheduled hearing date to review the investigative file. Parties in cases that does not constitute Title IX covered sexual harassment are not provided a copy (hard copy or electronic format) of the investigative file, including the evidence.

Composition of Hearing Panel

The Title IX Coordinator or designee will appoint a Chair to a Hearing Panel composed of a total of three (3) members, including the Chair, who may be members of faculty or staff and who have not been previously involved with the investigation or any prior decision-making or appeals related to this specific case.

Notification of Charges and Hearing Date

The Notification of Charges will include the following information:

- A description of the alleged violation(s), a description of the applicable procedures and a statement of the potential sanctions/responsive actions that could result.
- The time, date and location of the hearing. If any party does not appear at the scheduled hearing, the hearing will be held in their absence. For compelling reasons, the Title IX Coordinator or designee may reschedule the hearing.
- The parties may have the assistance of an advisor at the hearing. Typically, advisors are members of the campus community, but the parties may select whomever they wish to serve as their advisor including attorneys. Note that the advisor may not make a presentation or represent the Complainant or Respondent during the hearing. For hearings involving Title IX covered Sexual Harassment, each party's advisor will be permitted to directly pose questions to the other party and to witnesses. For non-Title IX covered Sexual Harassment, parties are responsible for asking all questions, through the Chair. The Chair will determine if a question(s) is relevant and reserves the right to reword a question if needed. The advisor may consult with their advisee party quietly or in writing, or outside the hearing during breaks, but other than posing questions to the other party or witness in Title IX covered Sexual Harassment complaints, may not speak on behalf of the advisee to the panel.
- Names of witnesses the College intends to call.
- Names of Hearing Panel members.

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

Hearing Procedures

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

Panel Member Recusal or Objections

Should either party object to any panelist, they must raise all concerns, in writing, to the Title IX Coordinator or designee within three (3) business days following the notice of hearing. Panel members will only be unseated if the Chair concludes that a bias precludes an impartial hearing of the grievance. Additionally, any panelist or Chair who feels they cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties and all witnesses in advance of the hearing.

Order of Hearing Presentations and Questioning

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

Last Updated fall 2023

Effect of Failure to Appear at the Hearing or Failure to Participate in Questioning Witnesses and Parties: A hearing may proceed whether or not a party or witness appears at the time scheduled for the hearing.

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

Advisors: In the event a party's advisor fail to appear to a Title IX hearing, the Chair may institute a reasonable delay to provide the party with a College advisor for purposes of asking questions of the other party and any witnesses.

Hearing Decorum

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

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

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

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

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

In hearings involving more than one Respondent or in which two Complainants have accused the same individual of substantially similar conduct, the College will typically consider the allegations in a joint hearing; however, the Title IX Coordinator or designee may permit separate hearings at their discretion. In all cases involving more than one Respondent, separate determinations of responsibility will be made for each Respondent.

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

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

Hearing Panel Decision

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

Notice of Determination

The Title IX Coordinator or designee will simultaneously inform the respondent and reporting party of the hearing panel's determination with ten (10) business days of the hearing. Notifications will be made in writing and may be delivered through institutional email accounts if the parties are students or employees, and by other reasonable means if they are not.

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

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

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

Sanctions

Sanctions or remedies will be determined by the Hearing Panel if there is a finding of responsibility. Factors considered when determining a sanction/remedy may include:

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

Student Sanctions

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

Employee Sanctions

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

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

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

Transcript Notation

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

1092(f)(1)(F)(i)(I)-(VIII, Marist College shall make a notation on the transcript of students found responsible after a conduct process that they were "suspended after a finding of responsibility for a code of conduct violation" or "expelled after a finding of responsibility for a code of conduct violation." For any Respondent who withdraws from the institution while such conduct charges are pending, and fails to complete the disciplinary process, Marist College will make a notation on the transcript that they "withdrew with conduct charges pending." Transcript notation guidelines are in place regardless of where or when the incident occurred. Marist College permits a student seeking removal of a notation for a suspension to petition the Title IX Coordinator in writing for such removal, provided that such notation will not be removed prior to one year after conclusion of the suspension. Notations for expulsion will not be removed. If a finding of responsibility is vacated for any reason, any such transcript notation will be removed.

Respondent's Withdrawal or Resignation During Investigation or Hearing Process

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

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

Appeals

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

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

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

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

The appeals panel will review the appeal request(s). The original finding and sanction/responsive actions will stand if the appeal is not timely or is not based on the grounds listed above, and such a decision is final. When any party requests an appeal, the other party (parties) will be notified and joined in the appeal.

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

Appeals decisions by the Appeal Panel are to be deferential to the original decision, making changes to the finding only where there is clear error and to the sanction/responsive action only if there is a compelling justification to do so.

Appeals are not intended to be full re-hearings of the allegations. In most cases, appeals are confined to a review of the written documentation or record of the original dismissal or the original hearing, and pertinent documentation regarding the grounds for appeal. Appeals granted based on new evidence should normally be remanded to the investigator(s) for reconsideration unless otherwise directed by the Title IX Coordinator or designee.

The appeal panel will generally, render a written decision on the appeal, describing its rationale, and communicate it simultaneously to all parties within five (5) business days from hearing of the appeal.

All parties should be informed of whether the grounds for an appeal are accepted and the results of the appeal decision.

Once an appeal is decided, the outcome is final. Further appeals are not permitted.

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

Failure to Complete Sanctions/Comply with Remedies

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

Title IX Coordinator or designee.

Records

In implementing this policy, records of all grievances, investigations, hearings, and outcomes will be kept by the Title IX Coordinator or designee for seven (7) years. All expulsions and terminations will be retained indefinitely in paper and/or in a database

Legal Challenges

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

Revision

This Policy and procedures supersede any previous policy(ies) addressing harassment, sexual misconduct, discrimination, and/or retaliation under Title IX and will be reviewed and updated annually by the Title IX Coordinator. Marist College reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this Policy and procedures.

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

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

Policy and procedures are effective August 15, 2023.

Appendix A

Marist College Athletics & NCAA “Policy to Combat Campus Sexual Violence”

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

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

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

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

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

Appendix B

About The Center for Victim Safety and Support

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

Help is available for:

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

All services are

Free • Accessible • Confidential

24-Hour Hotlines

Rape Crisis & Crime Victims
(845) 452-7272

Domestic Violence
(845) 485-5550

Contact Us

29 North Hamilton Street
Poughkeepsie, NY 12601

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

www.familyservicesny.org



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



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

Center for Victim Safety and Support

Victim Services

24-Hour Hotlines
Rape Crisis & Crime Victims
(845) 452-7272

Domestic Violence
(845) 485-5550

We are for hope
for justice
for empowerment
against violence



What We Do

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

Advocacy

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

Counseling

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

Children Services

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

Community Outreach / Volunteer and Internship Opportunities

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

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

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

As a Victim You Have the Right to Be:

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

For more information about your rights you can also contact:

NYS Office of Victim Services
800-247-8035
ovs.ny.gov

All Services Are

Free • Accessible • Confidential



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

Services are available in Spanish.

Appendix C

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

All students have the right to:

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

Appendix D

Student Sanctions

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

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

If a student is again found responsible for any further College policy violations including failure to complete previously imposed sanctions or adhere to previously imposed conditions, at minimum, the student may automatically be recommended for suspension for a minimum of one semester. This sanction results in the loss of six (6) priority points.

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

for specific information.

- *Behavioral Requirement.* This includes required activities including, but not limited to, seeking academic counseling or substance use screening, writing a letter of apology, etc.
- *Mandated Room Reassignment.* A notice that the behavior merits the immediate relocation of the student to another campus residence. This decision will be made in conjunction with the Office of Housing and Residential Life.
- *Mandated Counseling Assessment and Compliance.* The student must attend an assessment and/or session in the Counseling Center or an off-campus licensed facility by a specific date. Unless otherwise stated by the student conduct body, the student is required to follow all recommendations made by the Counseling Center or off-campus licensed facility as a result of the assessment.
- *Discretionary Sanctions.* Work assignments, community service, and other related sanctions that meet with the approval of the Director of Student Conduct. Other sanctions include but are not limited to:
 - Letters of apology/thank you
 - Essay or research paper on assigned topics
 - Disqualification from future housing selection process
 - Program presentations
- *Withholding Diploma.* The College may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has a grievance pending, or as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree.* The College reserves the right to revoke a degree awarded from the College for fraud, misrepresentation or other violation of College policies, procedures or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- The following sanctions may be imposed upon groups or Student Organization(s) found to have violated the Student Code of Conduct:
 - Those sanctions listed in above.
 - Suspension or Expulsion of Student Organization includes temporary or permanent loss of recognized status with the College.
 - Additional sanctions specific to Student Organizations which may be found in the organization's constitution, the Office Greek Affairs, or the Office of Student Activities policies and a national affiliate, if applicable.

- Priority Point Loss: Any student on deferred residence hall suspension or those that lost six (6) priority points or more will not be allowed to participate in the housing room selection process and may not be eligible for college housing. Incidents that occur during the spring semester could impact a student's eligibility to participate in the room selection process for the fall semester.
- More than one of the sanctions listed above may be imposed for any single violation.
- Other than Suspension and Expulsion, disciplinary sanctions will not be made part of the student's permanent file but will become part of the student's confidential disciplinary record maintained in the Office of Student Conduct as per FERPA requirements.

Appendix E

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

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

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

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

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

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

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

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

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

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

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

ⁱ For additional guidance please see: <https://www.govinfo.gov/content/pkg/FR-2018-09-21/pdf/2018-20574.pdf>;
https://www.nsf.gov/od/oecr/docs/Sexual_Harassment_FAQs.pdf;
https://www.nsf.gov/od/oecr/awardee_civil_rights/titleix_faqs.jsp