



**INTERIM POLICY AND PROCEDURES
RELATING TO SEXUAL MISCONDUCT**

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I. POLICY STATEMENT

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

Accordingly, Mercy is committed to:

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

Throughout this Policy, rights afforded and responses by the College will vary depending on whether the complainant is a student or employee, and whether conduct falls squarely under the federal Title IX regulations or not, as a result of the intersection of the various federal, state laws and local laws relating to sexual harassment and sexual violence, including but not limited to: federal laws such as Title IX, Title VII and the Clery Act/Violence Against Women Reauthorization Act of 2013 ("VAWA"); and state laws including Article 129A and 129B of the New York State Education Law, as well as the New York State, New York City and Westchester

County Human Rights Laws. The College will make every effort to make clear the policies as it pertains to each area, but in the event of confusion, please contact Mercy's Title IX Coordinator for clarification.

II. PROHIBITED CONDUCT

A. Sexual Harassment and Sexual Violence

This policy prohibits sexual harassment and sexual violence (together "sexual misconduct") against Mercy College students and employees.

Sexual harassment is defined under federal law as conduct on the basis of sex that satisfies one of more of the following:

- A school employee conditioning education or work aids, benefits or services on an individual's participation in unwelcome sexual conduct (i.e. quid pro quo);
- Unwelcome conduct of a sexual nature, such as unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, graphic and electronic communications or physical conduct that a reasonable person would determine is so **severe, pervasive, and objectively offensive** to adversely affect an individual's participation in education or other Mercy College activities; or
- Sexual assault, dating violence, domestic violence, or stalking (collectively referred herein as "sexual violence.")

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

B. Retaliation

The College prohibits retaliation against any person who reports sexual harassment, or sexual violence, assists someone making such a report, or participates in any manner in an investigation, hearing or resolution of a complaint under this Policy.

The complete definitions of these terms, as well as other key terms used in this Policy, are set forth in Section XV below.

III. APPLICABILITY

This Policy applies to **all students and employees**, including all full-time and part-time faculty and staff at all of Mercy College's campuses and locations.

This Policy applies regardless of an individual's race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction when sexual misconduct occurs in the College's educational programs or activities, against a person in the United States.

While this Policy applies to prohibited sex discrimination, the College's [*Policy on Equal Opportunity and Non-Discrimination*](#) ("*Non-Discrimination Policy*") addresses all *other* forms of prohibited discrimination. The College strictly prohibits discrimination, harassment and retaliation against any of its students and employees, as well as the following: **student applicants for admission, applicants for employment, and contractors and vendors (defined in Section XV below), collectively referred to herein as "Other Community Members."** Complaints under the College's *Non-Discrimination Policy* can be made here: [Discrimination Complaint Form](#).

If any of these Other Community Members believe they are being subjected to Sexual Harassment or Sexual Violence by a Mercy College student or employee, they may also file a complaint under this Policy and Procedures Relating to Sexual Misconduct.

If Other Community Members engage in behavior prohibited under this Policy, the College will take appropriate action regarding their access to the College campuses.

IV. TITLE IX COORDINATOR

Mercy College has designated an employee as the "Title IX Coordinator." This employee is responsible for compliance with Title IX of the Education Amendments of 1972, which prohibits sex discrimination in education programs, as well as enforcing New York State's sexual harassment laws, New York Education Laws 129A and 129B, and VAWA. Contact information for the Title IX Coordinator is in Appendix B, page 27.

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

- A. Ensuring their contact information is provided to applicants for admission and employment, including name, title, office address, e-mail address, and telephone number of the Title IX Coordinator, and that this information is prominently displayed on the College website;
- B. Receiving all complaints that are not strictly confidential, including providing emergency access in the first instance of disclosure by an individual reporting under this Policy;
- C. Overseeing the investigation of complaints;

- D. Ensuring all persons involved in a complaint are advised of their rights, in writing, under state and federal laws, and this Policy;
- E. Ensuring investigations are handled in a prompt and thorough manner, maintaining confidentiality when requested and where appropriate, and offering privacy for all persons involved to the greatest extent possible;
- F. Keeping the College President and other appropriate senior administrators informed of ongoing investigations, including findings of misconduct and penalties to be imposed under this policy;
- G. Ensuring appropriate student education and employee training, including for Responsible Employees (defined below), Hearing and Appeals Panel members, is conducted;
- H. Ensuring a campus climate assessment is conducted in accordance with relevant law; and
- I. Ensuring the College's compliance with federal and state reporting obligations.

V. **IMMEDIATE ASSISTANCE IN SEXUAL VIOLENCE CASES**

A. Reporting to Law Enforcement

Students or employees who experience or observe any form of sexual violence on or off-campus (including Mercy College sponsored trips, study abroad or events) are strongly encouraged to immediately report the incident by calling 911, contacting their local police department, state police, or contacting the Mercy College Office of Campus Safety, which is available 24 hours a day, 7 days a week at 914-674-9999 (or x 9999). The College shall have an appropriately trained employee available at all times to provide the complainant with information regarding options to proceed, including information regarding the criminal justice process and the preservation of evidence. Campus Safety officers can also assist the complainant with filing a complaint both on and off-campus, and in obtaining immediate medical attention and other services.

B. Obtaining Immediate Medical Attention and Emotional Support

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

On-campus resources, at no cost to students, include a nurse/nurse practitioner and registered nurses at the Dobbs Ferry campus and licensed mental health counselors through the Health and

Wellness Center. Please visit the College's website at: <https://www.mercy.edu/student-affairs/health-wellness-center> for more information about obtaining assistance.

Appendix B provides a list of emergency contacts and resources, including rape crisis centers, anonymous and confidential reporting hotlines, mental health counseling, victim advocacy services, legal assistance, and visa immigration services available throughout Westchester County and New York City. This list also includes a designation of which local hospitals are designated as SAFE (Sexual Assault Forensic Examination) hospitals, which are specially equipped to handle rapes, including the gathering of evidence. These services are available to both students and employees.

VI. REPORTING SEXUAL HARASSMENT OR SEXUAL VIOLENCE AT MERCY

Mercy College encourages individuals who have experienced sexual harassment or sexual violence (referred to in this Policy as "Complainants") to report the incident to campus authorities, even if the incident has already been reported to outside law enforcement authorities, and regardless of whether the incident took place on or off-campus. Individuals who are not Complainants may also report matters to the Title IX Coordinator. Such reporting will enable Complainants to get the support they need and provide the College with the information it needs to take appropriate action. After a report is made, the College shall inform the individual of their legal rights, including but not limited to those listed in Appendix A.

A. Filing a Complaint with Campus Authorities

1. Student Complaints Under Title IX

In order for the College to pursue an investigation under Title IX, the student Complainant must submit a signed, formal complaint alleging sexual misconduct against a Respondent and requesting that the College investigate the allegations of sexual misconduct. At the time a formal complaint is filed, a complainant must be participating in or attempting to participate in the educational program or activity of the school with which the formal complaint is filed.

A formal complaint can be filed with the Title IX Coordinator in person, by mail, by electronic mail, or by using the online complaint form. The complaint must contain the Complainant's physical or digital signature, or otherwise indicate that the complainant is the person filing the formal complaint.

In certain cases where there are complaints from multiple Complainants against one individual, the Title IX Coordinator may file a formal complaint. The filing of a complaint by the Title IX Coordinator, however, does not make the Title IX Coordinator a party in the investigation. In such instances the Title IX Coordinator will remain free from bias and conflicts.

While a formal complaint as described above is necessary for the College to pursue an investigation under this policy, students who experience sexual harassment or sexual violence are encouraged to notify the **Title IX Coordinator** or one of the following campus authorities or

offices who will then notify the Title IX Coordinator: **Office of Campus Safety; Vice President of Student Affairs; or Residence Life staff.**

If a student raises a complaint of sexual harassment or sexual violence, but does not wish to file a formal complaint, the College will make every reasonable effort to provide supportive measures and also determine if the student or employee can seek recourse under a different College policy.

2. Employee Complaints of Sexual Harassment or Sexual Violence

Under New York State law, an employee complainant does not have to file a formal grievance of sexual harassment or sexual violence. Nonetheless, the College encourages employees who experience sexual harassment or sexual violence by another employee, student or Other Community Member to notify the **Title IX Coordinator** or one of the following campus officials/offices who will then notify the Title IX Coordinator: **Office of Campus Safety** or the **Department of Human Resources**, so that the College can act promptly to address the complaint.

3. Other Community Members, such as contractors, applicants for employment or admission, should contact the **Title IX Coordinator** or the **Office of Campus Safety**.

B. The College's Response Under Title IX and Other Sections of this Policy

The nature and scope of the College's response will depend on whether the incident meets the parameters of Title IX and this Policy, or a different College policy such as the Student Code of Conduct.

1. Student Title IX Complaints

Incidents will be adjudicated under Title IX for student complaints when: the College has actual knowledge of sexual misconduct through a signed complaint form; the alleged conduct occurred within the College's education program or activity; and the alleged conduct was against a person in the United States. See Section VI. G. below for Mercy College employees who are required to report ("Responsible Employees") instances of sexual harassment or sexual violence when they have actual knowledge.

At the time of filing a formal complaint, the student Complainant must be participating in or attempting to participate in the education program or activity of the school with the College. If instances of sexual misconduct involving Mercy students occurs off campus in school-related activities, such as study abroad or athletic travel, for example, complaints should report the matter to the Title IX Coordinator as well, although separate procedures will be followed under the College's Judicial Process. The Complainant can notify the Title IX Coordinator in writing at any point in the process of the desire to withdraw the formal complaint or allegations.

The College reserves the right to dismiss formal complaints when the respondent is no longer enrolled or employed by the College or if specific circumstances prevent the College from gathering sufficient evidence to reach a determination.

When a complaint is dismissed, the Title IX Coordinator will send a written notice of dismissal to both Complainant and Respondent (hereinafter also known as the “Parties”) stating the reasons for the dismissal.

Regardless of which policy is used (e.g. this Policy, the Non-Discrimination Policy or Student Conduct) and regardless of whether a complaint is dismissed, students and employees reporting sexual misconduct will be offered supportive measures as set forth immediately below.

C. Support Assistance for Complainants and Respondents

Upon receipt of a complaint, the Title IX Coordinator will provide written notification to the Complainant about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and any other services available to the complainant, available through the College as well as community resources as set forth in Appendix B. These supportive measures will be offered even if the complainant chooses not to file a formal complaint, in the following manner:

- When the Title IX Coordinator receives a complaint of sexual harassment or sexual violence from a student, they will work with the Vice President of Student Affairs to identify a trained staff member to assist the complainant with support services.
- When the Title IX Coordinator receives a complaint of sexual harassment and sexual violence from an employee, the Title IX Coordinator will work with the Office of Human Resources to assist the complainant with support services.
- When the Title IX Coordinator receives a complaint of sexual harassment and sexual violence from Other Community Members, the Title IX Coordinator will provide the complaining individual with a list of local resources and support services.
- The Title IX Coordinator will also provide written notification to the respondent with information regarding where and how to obtain supportive services both on and off-campus.

D. Amnesty for Alcohol and/or Drug Use

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

E. Reporting Retaliation

Any individual who believes they have been retaliated against for making a report under this Policy, assisting someone making a report, or participating in any manner in an investigation,

hearing or resolution of a sexual harassment or sexual violence complaint may file a complaint with the Title IX Coordinator. All retaliation complaints will be investigated in accordance with the investigation procedures set forth in this policy, and individuals who are found to have engaged in retaliation will be subject to disciplinary action.

F. Malicious Allegations

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

G. Employees Required to Report Incidents of Sexual Harassment and Sexual Violence

1. Responsible Employees

The College has designated certain employees as “Responsible Employees” who have a duty to report incidents of sexual harassment and sexual violence, including all details of which they become aware, immediately to the Title IX Coordinator. Such employees are not permitted under any circumstances to maintain a complainant’s confidentiality, except that the Title IX Coordinator may honor a request for confidentiality under the circumstances described in Section V below. These employees will, however, maintain a Complainant’s privacy to the greatest extent possible, and information reported to them will be shared only with the Title IX Coordinator, the Responsible Employee’s supervisor (if relevant), and other people responsible for handling the College’s response to the report on a need-to-know basis.

Before a complainant reveals any information to a Responsible Employee regarding an incident of sexual harassment and sexual violence, the employee shall advise the Complainant of the employee’s reporting obligations to notify the Title IX Coordinator, and if the Complainant wishes to maintain confidentiality and not disclose any information to the responsible employee, direct the Complainant to confidential resources at the Health and Wellness Center.

Mercy College has designated the following individuals as Responsible Employees:

- Campus Safety staff
- Residence Life Directors and Assistants
- Vice President and Assistant Vice Presidents of Student Affairs
- Director and Assistant Directors of Human Resources
- Provost and Associate Provosts
- President
- Staff Officers
- Deans and Associate Deans
- Athletic Director and Assistant Athletic Directors

2. Matters Involving Employees

For cases in which the Complainant and/or Respondent is an employee, **all management and supervisory personnel** have an affirmative duty to and are required to immediately report sexual harassment or sexual violence to the Title IX Coordinator. See Section XV below for definitions of management and supervisory personnel. For questions regarding supervisor or manager title or status, contact the Office of Human Resources.

3. Required Reporting

Even in cases where a Complainant requests confidentiality, the Responsible Employee and manager or supervisor nonetheless must report the incident to the Title IX Coordinator. See Section VII below regarding the College's obligations in handling requests for confidentiality.

Even when a Responsible Employee is made aware of a complaint, and notifies the Title IX Coordinator, in order for Mercy College to be put on official notice of a Title IX complaint, for cases involving students, a formal complaint must be submitted. A formal complaint is a signed document filed by a complainant alleging sexual misconduct against a Respondent and requesting that the school investigate the allegations of sexual harassment or sexual violence.

A formal complaint is not required for cases involving employees, and the College must take action upon learning of an alleged incident of sexual harassment or sexual violence.

H. Reporting and Other Actions by Bystanders

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

I. Coordination with Outside Law Enforcement Authorities

In cases where the Complainant files a complaint with outside law enforcement authorities as well as with the College, the College shall determine what actions to take based on its own investigation. The College may coordinate with outside law enforcement authorities in order to avoid interfering with their activities and, where possible, to obtain information regarding their investigation. The College may delay its investigation temporarily while law enforcement conducts its investigation; however, such delay shall not exceed ten (10) days unless the law enforcement agency specifically requests and justifies a longer delay.

Neither a law enforcement determination whether to prosecute a Respondent, nor the outcome of any criminal prosecution, is dispositive of whether the Respondent has committed a violation of this Policy.

VII. RIGHTS AND OBLIGATIONS RELATING TO CONFIDENTIALITY

A. Confidential Resources

1. Students

Students at the College who wish to speak to someone who will keep all of the communications strictly confidential regarding sexual harassment and sexual violence, should speak to a mental health counselor and/or nurse/nurse practitioner at the College's Health and Wellness Center. Mental health counselors and nurse/nurse practitioners will not report any information about an incident to College officials without the student's permission, except where there is an imminent threat to the complainant or any other person, or pursuant to legal reporting obligations, set forth in Section VII.C.2 below.

A Complainant who speaks solely to a mental health counselor and/or a nurse/nurse practitioner must understand that the College may be unable to investigate the particular incident or pursue disciplinary action against the Respondent. Even so, these health care professionals will assist the student in receiving other necessary support. A student who first requests confidentiality may later decide to file a complaint with the school or report the incident to local law enforcement authorities and thereafter have the incident fully investigated. However, delays in reporting, even slight, may hinder an investigation by the College or law enforcement authorities.

2. Employees

While there is no one directly employed by the College to whom employees can speak on a confidential basis regarding sexual harassment or sexual violence, free confidential support services are available through Mercy's Employee Assistance Program (EAP), which is listed on the Benefits Focus website. In addition, confidential community counseling resources are available throughout Westchester County and New York City. See Appendix B.

B. Handling Confidentiality Requests After Report Has Been Received by the College

After a report of an alleged incident of sexual harassment or sexual violence has been received by the Title IX Coordinator, a Complainant may request that the matter be investigated without their identity or any details regarding the incident be divulged at the preliminary review stage, or that no investigation into a particular incident be conducted or that an incident not be reported to outside law enforcement authorities. In all such cases, the Title IX Coordinator will weigh the complainant's request against the College's obligation to provide a safe, non-discriminatory environment for all College community members, including the Complainant.

Factors used to determine whether to honor such a request include, but are not limited to:

1. Whether the Respondent has a history of violent behavior or is a repeat offender;
2. Whether the incident represents escalation in unlawful conduct on behalf of the Respondent from previously noted behavior;
3. The increased risk that the Respondent will commit additional acts of violence;
4. Whether the Respondent used a weapon of force;
5. Whether the Complainant is a minor; and
6. Whether the College possesses other means to obtain evidence such as video surveillance, and whether available information reveals a pattern of perpetration at a given location or by a particular group.

In circumstances where the College decides to proceed with a full investigation (with the Complainant's formal complaint filed or in the rare case where the Complainant does not wish to proceed but the College feels that there is a danger posed to the Complainant or the College community), the College is required under Title IX to divulge the Complainant's identity to the Respondent so that they may respond to the matter in their defense.

C. Other Reporting Obligations Under Federal and State Law

Regardless of a request for confidentiality, the College is required to abide by laws mandating disclosures in the following circumstances:

1. Annual Crime Statistics. The College must report certain crimes occurring in specific geographic locations that shall be included in the College's annual security report pursuant to the Clery Act, **though it is anonymous**, and does not identify either the specifics of the crime or the identity of the Complainant.

2. Timely Warnings. The College is also required to issue timely warnings of crimes enumerated in the Clery Act occurring within relevant geography that represent a serious or continuing threat to students and employees, except in those circumstances where issuing such a warning may compromise current law enforcement efforts or when the warning itself could potentially identify the reporting individual. The Complainant will not be identified in the timely warning.

3. NYS Campus Safety Act. The College must notify the appropriate law enforcement agency as soon as practicable but in no case more than twenty-four hours after report of a violent felony or student who resides in housing owned or operated by such institution is missing; provided that such reporting requirement shall take into consideration applicable federal law, including, but not limited to, the federal Campus Sexual Assault Victims' Bill of Rights under Title 20 U.S. Code Section 1092(f) which gives the victim of a sexual offense the right on whether or not to report such offense to local law enforcement agencies.

4. Notice to Parents. While the Family Educational Rights and Privacy Act (FERPA) allows the College to share information with parents when there is a health and safety emergency or when the student is a dependent on either parent's prior year federal income tax return, under New York State law the College is not permitted to share information about a report of domestic

violence and dating violence, stalking or sexual assault with parents without the permission of the complainant.

5. Suspected Child Abuse. Certain members of the Mercy College community who interact with, supervise, chaperone, or otherwise oversee minors in programs or activities at Mercy or sponsored by Mercy (such as those in a clinical setting) are required to report immediately to the New York State Maltreatment Hotline at 1-800-342-3720 if they have reasonable cause to suspect abuse or maltreatment of individuals under the age of 18. If anyone other than New York State mandated reporters has reasonable cause to believe that a minor is being or has been abused or maltreated on campus, they should notify either the Title IX Coordinator or the College Campus Safety Department. If anyone observes child abuse while it is happening, they shall immediately call 911.

VIII. INTERIM SUPPORTIVE MEASURES AND ACCOMMODATIONS

The College will take immediate steps to support the individuals in the educational and employment setting, as well as the campus community at large, including taking interim protective measures and provide accommodations, as appropriate, during an investigation. Such measures are available even if a Complainant decides not to officially report or otherwise proceed with an investigation. These measures are individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual misconduct. The Complainant will be informed in writing of the availability of such interim protective measures and accommodations. The Respondent will also be offered supportive measures and accommodations as appropriate.

The College can issue a no-contact order between the Complainant and the Respondent. Continued intentional contact on the part of either party would be a violation of this Policy subject to additional conduct charges. A no-contact order does not guarantee that either party will have limited access to the campus or other educational services and programs.

The College will, upon request, assist a Complainant with obtaining an order of protection or equivalent protective or restraining order through law enforcement authorities; provide a copy of any order the College may receive to both the Complainant and the Respondent; have a knowledgeable individual on campus explain the order and answer any questions about it, including information from the order about the Respondent's responsibility to stay away from the protected person or persons; provide an explanation of the consequences for violating these orders, including but not limited to arrest, additional disciplinary charges, and interim suspension; and receiving assistance from the College Office of Campus Safety in contacting local law enforcement to effect an arrest for violating such order.

Other supportive and interim measures include making necessary changes to academic programs, including a change in class schedule; making appropriate accommodations to permit the complainant to take an incomplete or drop a course or courses without penalty; permitting either party the opportunity to attend a class remotely; providing an academic tutor; extending deadlines for assignments; providing academic support services when academic progress is impacted by the

alleged incident; making changes to residential housing situations; changing an employee's work assignment or schedule; providing an escort to and from class or campus buildings; offering counseling services through the Health and Wellness Center or a referral to an off-campus agency; and providing assistance with filing a criminal complaint.

Protective measures will remain in place and supportive services will be provided for as long as necessary during and after any investigation, though protective measures may be adjusted based on the findings after an investigation. Both the Respondent and the Complainant shall, upon request, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of any such interim measures and accommodations, and shall be allowed to submit evidence in support of their request. The request for such a review shall be made to the Title IX Coordinator, who will make a determination whether to modify interim measures.

IX. INVESTIGATING COMPLAINTS OF SEXUAL MISCONDUCT

A. The Investigation

Upon receipt of a signed complaint form requesting an investigation from students, or upon receipt of an allegation relating to an employee as a complainant, Mercy College will investigate and adjudicate formal complaints of sexual misconduct using a grievance process that incorporates due process principles, treats all Parties fairly, and reaches reliable responsibility determinations.

The Title IX Coordinator will determine if the allegations meet the Federal Title IX criteria for an investigation, or state and local law criteria, under this Policy. If the allegations **do not** meet any of these criteria, the Title IX Coordinator will provide a rationale in writing to the Complainant and Respondent simultaneously either (1) dismissing the matter and not referring it for further action or (2) referring the matter to the appropriate authority on campus to determine if the complaint can be adjudicated under a different College policy such as the Student Code of Conduct, Faculty Handbook, Employee Handbook and/or Collective Bargaining Agreement.

If the Title IX Coordinator determines that an investigation is warranted under this Policy, the Title IX Coordinator will ensure that:

1. The investigation is conducted in a timely, thorough, and impartial manner that provides the Complainant and the Respondent a meaningful opportunity to be heard;
2. That the Parties are informed that they may inspect and review evidence;
3. The College conducts an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence;
4. That the Parties are notified in writing as to the alleged prohibited conduct committed; the approximate date, time and location of occurrence; the factual allegations concerning the alleged violation; and the possible sanctions;
5. A statement is provided to the Parties that the Respondent is presumed not responsible of the alleged misconduct until the conclusion of the grievance process;
6. Both Parties are notified in writing as to the time, date, and purpose of any investigative interviews, meetings, and hearings;

7. Both Parties Are advised that they may have an advisor of their choice, who may be an attorney; and
8. The Parties are informed that the College's Code of Conduct prohibits making false statements or knowingly submitted false information during the grievance process.

The Title IX Coordinator will coordinate investigative efforts with other College offices and may designate another trained individual to conduct all or part of the investigation. The investigation shall be conducted by an individual who has received training in conducting investigations of sexual violence, the effects of trauma, impartiality, and the rights of the Respondent, including the right to a presumption that the Respondent is "not responsible" until a finding of responsibility is made.

While the Title IX Coordinator will facilitate the overall investigation, and can also serve as an investigator, a separate College employee(s) will serve as facilitator for the hearing, as well as the decision maker(s). The decision maker(s) will be selected by the College who is/are not the Title IX Coordinator or an investigator and is/are free from any bias or conflict of interest. The decision maker(s) will participate in the hearing and afterwards, determine if the Respondent is responsible for any of the allegations.

Each party has the opportunity to offer evidence during the course of the investigation. Once evidence is collected, the Title IX Coordinator will send both Parties, and their advisors, evidence directly related to the allegations, in electronic format, with each party having ten (10) calendar days for both Parties to inspect, review, and respond to the evidence prior to the hearing.

After the evidence review process, an investigative report will be sent to both Parties, and their advisors, that summarizes relevant evidence, in electronic format, with each party having 10 (ten) calendar days for both Parties to respond.

B. Informal Resolution

The College, in its discretion, may offer an informal resolution after a formal complaint of sexual misconduct is received, provided both Parties give voluntary, informed, written consent to attempt informal resolution. Informal resolution may include mediation or restorative justice and be facilitated by an employee trained in informal resolution. The College will in no way require either party to agree to or participate in an informal resolution. At any time prior to the completion of the informal resolution, with both Parties agreeing to the resolution outcome, any party has the right to withdraw from the informal resolution process and resume the grievance process in respect to the formal complaint. The College will not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

C. Hearings

In the event that there is no resolution of the matter, the Respondent is entitled to a hearing to determine responsibility. All hearings are required by federal law to be held live and in real-time, either in-person or through video conferencing, with both Parties having the right to cross examination. The Parties may be in the same room during the hearing or at the request of either

party, be in separate rooms. The College reserves the right to have the Parties in separate rooms. When in separate rooms, technology will be used to allow both Parties to see and hear the hearing in real time. In keeping with federal law, the hearing will be recorded.

The hearing facilitator or decision maker(s) is/are responsible for ensuring the hearing is conducted in a civil and professional manner, and reserve the right to take actions necessary to maintain decorum and ensure adherence to Policy. Both Parties have the right to request breaks during the hearing.

1. Advisors

Both Parties are allowed an advisor of their choice who can be an attorney to be present during the hearing. Either party may request an advisor through the College at no charge to conduct cross-examination at the hearing. Any advisor provided by the College will be trained to serve as an advisor, including having knowledge about questions and relevancy.

Each Party's advisor may ask the other party and any witnesses relevant questions and follow-up questions, including questions challenging credibility. This cross examination must be conducted directly, orally, and in real time **by the advisor only**. Badgering on the part of the advisor, including asking the same question repeatedly, will not be allowed.

2. Cross Examination and Impact Statement

Only relevant cross-examination questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a cross-examination question, the decision maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. Cross-examination questions must be presented to the decision maker(s) prior to the hearing to determine relevancy.

If a party or witness does not submit to cross examination at the live hearing, the decision-maker(s) cannot rely on any statement of that party or witness in reaching a determination regarding responsibility. The decision maker(s), however, cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or a refusal to answer cross-examination or other questions.

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

Neither the Complainant's or the Respondent's physical or mental health diagnosis or treatment will be admitted in the hearing or the stage of the process that determines responsibility, unless prior written approval from the respective party is obtained.

Past findings of domestic violence, dating violence, stalking, sexual assault, or other forms of sexual misconduct may be admissible in the stage of the process where sanctions are determined.

The Complainant is permitted to make an impact statement during the point of the proceeding where the decision maker is deliberating on appropriate sanctions.

Note that this hearing process is required by federal regulations under Title IX and as such, preempts all other College policies and procedures, including under relevant Policies, Procedures, Collective Bargaining Agreements, and Faculty and Human Resources Handbooks.

D. Conflicts

If any administrator designated by this Policy to participate in the investigation or resolution of a complaint, including but not limited to the Title IX Coordinator, is the Respondent, or there exists a conflict for any other reason such as knowledge of the Complainant and/or the Respondent, the President will appoint another College administrator to perform such person's duties under this Policy. If the President is the Respondent, the investigation will be handled by the College's General Counsel or designee.

E. Admission and Acceptance of Penalty Prior to Finding

At any time prior to a finding of misconduct, the Respondent may admit to the charges and accept the penalty that the decision maker determines to be appropriate to address the misconduct. If the Respondent is a student, this agreed upon penalty, if applicable, shall be placed on the respondent's transcript consistent with Section XI.A.4 below. Before resolving a complaint in this manner, the decision maker must first consult with the Complainant and provide the Complainant an opportunity to object to the proposed resolution in writing. If a resolution is reached over the Complainant's objection, the decision maker or designee shall provide the Complainant with a written statement of reasons supporting such resolution, and the complainant may appeal the decision to enter into the resolution to the Sexual Misconduct Appeals Panel.

F. Timing

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

G. Report of Findings and Standard of Evidence

Upon completion of the hearing, the decision maker(s) will make a determination of responsibility using the preponderance of the evidence standard. Under preponderance of the evidence standard, the Decision Maker(s) determines whether there is a greater than 50% chance that the allegations are true.

The decision maker(s) will issue a written determination regarding responsibility, sent both to the Complainant and the Respondent, simultaneously, as follows:

- A description of the procedural steps taken from the receipt of the complaint through the determination, including any notifications to the Parties, interviews with Parties and witnesses, site visits, methods used to gather other evidence, and hearings held findings of fact, and conclusions about whether the alleged conduct occurred;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the College's code of conduct to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the Respondent, and any remedies designed to restore or preserve equal access to the recipient's education program or activity; and
- The College's procedures and permissible bases for the Complainant and Respondent to appeal.

The Title IX Coordinator shall apprise the President of the College of the findings of any investigation, as well as any recommended sanctions to be imposed. Following the completion of the investigation, the Title IX Coordinator or designee will report the findings to the Vice President of Student Affairs if the Respondent is a student, the Provost if the Respondent is a faculty member, and to the Director of Human Resources if the Respondent is an employee (other than a faculty member).

If there is a finding after the hearing (of **responsibility** or **no responsibility**), the College is precluded from bringing additional disciplinary action against the Respondent under another College policy or procedure.

X. APPEALS PROCESS

Both Parties have the right to an appeal from a determination regarding responsibility, any sanctions, and/or the College's dismissal of a formal complaint or any allegations therein, on one or more of the following grounds: a procedural irregularity that affected the outcome of the matter; newly discovered evidence that could affect the outcome of the matter; and/or there was a conflict of interest or bias on the part of College personnel that affected the outcome of the matter.

An appeal must be filed in writing to the attention of the Title IX Coordinator no later than ten (10) calendar days from the date the written determination is sent to both Parties. The Title IX Coordinator will forward any appeals to the Sexual Misconduct Appeals Panel for a fair and impartial review by individuals without a conflict of interest. Members of this three-person appeal

panel are specially trained in hearing Title IX cases, including the effects of trauma on parties, impartiality, the rights of both parties, the College's policies and procedures, and other issues including but not limited to domestic violence, dating violence, stalking and sexual assault.

The Title IX Coordinator will inform the other party in writing when an appeal is received. The panel will meet and reach a decision within thirty (30) calendar days from receipt of the appeal, if not sooner, and any delays will be communicated to both parties. The Title IX Coordinator will notify both Parties in writing of the panel's decision.

There are no further appeals available at the College.

XI. DISCIPLINARY ACTION

After making a finding of responsibility, the decision maker(s) will consult with the appropriate College official(s) (i.e. the Vice President of Student Affairs, the Provost or the Director of Human Resources) as to sanctions in accordance with the applicable policy, procedure, handbook, Collective Bargaining Agreement or written contract. When it is determined that, by a preponderance of the evidence, a violation of this Policy has occurred, such action shall be authorized as deemed necessary to properly correct the effects of or to prevent further harm to an affected party or others similarly situated. The Title IX Coordinator shall apprise the President of the College of the findings of any investigation, as well as the recommended sanction(s) to be imposed.

A. Rights

In cases where it is recommended that discipline be imposed, the Respondent and Complainant shall be entitled to (1) choose whether to disclose or discuss the outcome of the conduct process; and (2) have all information obtained during the course of the conduct process be protected from public release until the appeals panel makes a final determination unless otherwise required by law.

B. Penalties

The range of penalties against individuals found to have committed a violation of this Policy include but are not limited to the following:

- **Students:** probation, removal from housing, removal from a sports team or other school activity, suspension or expulsion following the relevant disciplinary procedures.
- **Employees** (including faculty): reprimand, suspension (paid or unpaid) or termination of employment following the relevant disciplinary procedures, if applicable.
- **Other Community Members, including contractors:** in cases where the person alleged to have committed sexual harassment or sexual violence on Mercy campuses is neither a Mercy student nor a Mercy employee, the College will take appropriate action, such as restricting her/his access to campus. In addition, the

matter will be referred to local law enforcement authorities in appropriate circumstances and consistent with this policy.

C. Interim Suspensions

When the Respondent is a student or employee who presents a continuing threat to the health and safety of the community, the College will take immediate steps to protect the Complainant in the educational and employment setting, including taking interim protective measures and by providing accommodations, as appropriate, during an investigation. The Complainant will be informed by the Title IX Coordinator in writing of such interim protective measures and accommodations, which may include, among other things:

- Making necessary changes to academic programs;
- Making necessary changes to residential housing situations;
- Changing an employee's work assignment or schedule; and/or
- Offering counseling services to the complainant and the respondent, through the Health and Wellness Center or a referral to an off-campus agency.

In circumstances where an interim suspension is imposed, it shall be in accordance with applicable Mercy College Student, Faculty and Employee handbooks, Collective Bargaining Agreements, written contracts, policies or procedures to the extent practicable. Both the Respondent and the Complainant shall, upon request, be afforded a prompt review by the Vice President of Student Affairs (for students), the Provost (for faculty) or the Director of Human Resources (for employees, excluding faculty), to determine whether the interim suspension is reasonable under the circumstances. The individual requesting review shall be allowed to submit evidence in support of their request of why there should be a modification of the interim suspension. The decision of the appropriate official noted above is final.

D. Notations on Transcripts

In cases in which a Respondent has been found responsible for committing a Clery Act reportable crime of violence, the College shall make a notation on their transcript stating that they was "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 the Respondent who withdraws from the College while such conduct charges are pending, and declines to complete the disciplinary process, the College shall make a notation on the transcript of such students that they "withdrew with conduct charges pending." Notations for expulsion and withdrawal with conduct charges pending will not be removed from a student's transcript. Notations for suspension shall not be removed prior to one year after conclusion of the penalty. If a finding of responsibility is vacated for any reason, such as after an appeal to the Sexual Misconduct Appeals Panel, any such transcript notation shall be removed.

E. FERPA

Nothing in this Policy, including notice regarding the results of the disciplinary process, violates the Family Educational Rights and Privacy Act (FERPA), including any initial, interim and final decision and the rationale by a College official entitled to resolve student disciplinary matters.

XII. CONSENSUAL RELATIONSHIPS

Sexual harassment may be at issue even in relationships that begin as consensual ones. In particular, such relationships can be problematic when one person in the relationship is, or could be perceived to be, in a position of institutional authority relative to the other person. In order to avoid that possibility, it is the policy of the College that any relationship in which one person has, or reasonably could be perceived to have, institutional authority over another member of the College community must be disclosed as follows, so that the matter may be addressed as appropriate under the circumstances:

- Any faculty member who is or becomes a party to a consensual relationship with a student—regardless of whether the student is in the faculty member’s class—must disclose that relationship to the Associate Provost or their school dean.
- Any non-faculty College employee who is or become a party to a consensual relationship with any student must disclose that relationship to the Office of Human Resources.
- Any employee (faculty member or otherwise) who is in a relationship with another employee with someone for whom they supervise, must disclose the relationship to the Office of Human Resources.

XIII. FILING EXTERNAL COMPLAINTS

Complainants have the right at any time to file complaints with the Office for Civil Rights (OCR) of the U.S. Department of Education, alleging violations of Title IX, and to file complaints with other appropriate agencies alleging violations of other federal, state or local laws, such as the Equal Employment Opportunity Commission (EEOC) (for employees), or the New York State, New York City or Westchester County Division of Human Rights. Contact information for OCR, the NYS Division of Human Rights, and other relevant agencies is set forth in Appendix B.

XIV. ADDITIONAL COLLEGE OBLIGATIONS UNDER THIS POLICY

In addition to addressing possible violations of this Policy, Mercy College has the following obligations:

A. Dissemination of Policies, Procedures and Notices

The Title IX Coordinator, in coordination with the Office of Student Affairs, Office of Campus Safety, the Office of Human Resources and other applicable offices, is responsible for the wide dissemination of the following: this Policy; Mercy College’s *Notice of Non-Discrimination*; the Title IX Coordinator’s name, phone number, office location, and email address; and contact information for the Office of Campus Safety.

Such dissemination shall include posting the documents and information on the College website and including it in any student or employee handbooks, and in resident life materials. In addition, the Mercy College Students' Bill of Rights, which is appended to and made a part of this Policy, must be distributed to any individual reporting an incident of sexual harassment or sexual violence at the time the report is made. It must also be distributed annually to all students. All of the above information shall be posted on the College's Title IX website in an easily accessible manner to the public, posted in campus residence halls and campus centers, and shall include links or information to file a report and seek a response.

B. Student Educational Programming

The Title IX Coordinator, in coordination with the Office of Student Affairs, Office of Campus Safety, the Office of Human Resources and other applicable offices, is responsible for ensuring that the College engages in a comprehensive student orientation and ongoing education campaign, using multiple methods, to educate members of the College community about sexual misconduct, including domestic violence, dating violence, stalking and sexual assault. The programming shall: (1) be culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs and informed by research or assessed for value, effectiveness, or outcome; and (2) consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community, and societal levels.

Some of the information to be imparted shall include, but not be limited to:

1. All of the information contained in this Policy, including:
 - a. prohibited conduct, resources offered while the College takes administrative and/or conduct action against an accused;
 - b. that College policies apply equally to all students regardless of sexual orientation, gender identity or gender expression;
 - c. the role of relevant College officials relating to this Policy; and the consequences and sanctions for individuals who commit these crimes and code of conduct violations;
2. Awareness of violence, its impact on victims and survivors and their friends and family, and its long-term impact, without identifying victims in any way;
- F. Bystander intervention and the importance of taking action to prevent violence when one can safely do so; and
- G. Risk assessment and reduction including, but not limited to, steps that potential victims, perpetrators, and bystanders can take to lower the incidence of violations, which may contain information about the dangers of drug and alcohol use, including underage drinking and binge drinking, involuntary consumption of incapacitating drugs and the danger of mislabeled drugs and alcohol, the importance of communication with trusted friends and family whether on campus or off campus, and the availability of College officials who can answer general or specific questions about risk reduction.

The College shall provide such educational programming:

1. To all new students, whether first-year, or transfer, undergraduate, graduate or professional;
2. To each student leader and officer of student organizations recognized by the College, as well as those seeking recognition by the College, prior to receiving recognition or registration;
3. To student-athletes prior to participating in intercollegiate athletic competition; and
4. To all students residing in College-sponsored housing prior to entering housing for the school year.

The College shall also offer educational programming to all other students not subject to required training, including international students, students that are also employees, students in student organizations, and distance learning students.

C. Faculty and Staff Training

The Title IX Coordinator, in coordination with the Office of Campus Safety, the Office of Human Resources and other applicable offices, is responsible for ensuring that all new employees and current employees, including but not limited to faculty, staff, administrators, security officers, athletic staff and residence life staff receive annual training regarding all aspects of this policy and on sexual misconduct (including domestic violence, dating violence, stalking and sexual assault).

D. Conducting Campus Climate Assessments and Annual Reporting

The College shall conduct, no less than every other year or as otherwise required by law, a campus climate assessment to ascertain general awareness and knowledge of the provisions of this Policy, including student experience with and knowledge of reporting and college adjudicatory processes, which shall be developed using standard and commonly recognized research methods. The assessment shall be structured to comply with applicable law, including Section 129-B of the New York State Education Law. The College shall publish the results of the surveys on its Title IX web page. The published results shall not contain any information which would enable a reader to identify any individual who responded to the climate assessment.

The College is required to report to the State of New York aggregate data relating to domestic violence, dating violence, stalking and sexual assault, in accordance with state and any applicable law.

XV. DEFINITIONS OF TERMS IN THIS POLICY

A. Affirmative Consent is a knowing, voluntary and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity or gender expression. Consent may be initially given but withdrawn at any time. Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act. Consent cannot be given when it is the result of any coercion, intimidation,

force, or threat of harm. When consent is withdrawn or can longer be given, sexual activity must stop.

In order to give consent, one must be of legal age (17 years or older). Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol. Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by lack of consciousness or being asleep, being involuntarily restrained, or if the individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.

B. Complainant refers to the individual who alleges that they have been the subject of sexual harassment or sexual violence, and can be a Mercy student, employee (including all full-time and part-time faculty and staff), or other Community Member, including but not limited to applicants for admission, applicants for employment, or contractors.

C. Complaint is an allegation of sexual harassment or sexual violence made under this policy. Under federal Title IX, students are required to file a formal complaint for an investigation or other action to commence. Employees are not required to file a formal complaint under State law. Under this Policy, a complaint may be brought to the College's attention by someone other than the Complainant.

D. Contractors are protected from prohibited discrimination under New York State law, and they include: subcontractors, vendors, consultants or other persons providing services pursuant to a contract in the workplace with the College or who are employees of such a contractor, subcontractor, vendor, consultant or other person providing services pursuant to a contract in the workplace with the College.

E. Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

F. Domestic Violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

G. Forcible Touching/Fondling is intentionally touching the sexual or other intimate parts of another person without the latter's consent for the purpose of degrading or abusing such person; or for the purpose of gratifying the actor's sexual desire.

H. Managers and Supervisors are employees who either (1) have the authority to make tangible employment decisions with regard to other employees, including the authority to hire, fire, promote, compensate or assign significantly different responsibilities; or (2) have the authority to make recommendations on tangible employment decisions that are given particular

weight. Managers and supervisors include but are not limited to: vice presidents, directors, deans, associate deans and academic unit heads.

I. Rape and Attempted Rape is the penetration or attempted penetration, no matter how slight, of any body part by a sex organ of another person, without the consent of that person.

J. Reporting Individual is any person who reports sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination).

K. Respondent refers to the individual who is alleged to have committed sexual harassment or sexual violence against a Mercy College student or employee, or Other Community Member.

L. Retaliation is adverse treatment of an individual as a result of that individual's reporting sexual harassment or sexual violence, assisting someone with a report of sexual harassment or sexual violence, or testifying or participating or refusing to participate in any manner in an investigation, proceeding, hearing or resolution of a sexual harassment or sexual violence complaint. Adverse treatment includes threats, intimidation, coercion, discrimination or other reprisals by either a complainant or respondent or by others such as friends or relatives of either a complainant or respondent.

M. Sexual Activity is penetration, however slight, of the vulva or the anus by the penis, hand/fingers or other object; contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person; or intentional touching, either directly or through the clothing of any other body part, with an intent to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of any person.

N. Sexual Assault is any form of sexual activity that occurs without consent.

O. Sexual Harassment under Title IX is unwelcome conduct of a sexual nature, including but not limited to unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, graphic and electronic communications or physical conduct of a sexual nature when: submission to or rejection of such conduct is made either explicitly or implicitly a condition of an individual's employment or academic standing or is used as the basis for employment decisions or for academic evaluation, grades, or advancement (quid pro quo); or such conduct is sufficiently severe and pervasive to adversely affect an individual's participation in employment, education or other Mercy College activities (hostile environment). The effect will be evaluated based on the perspective of a reasonable person in the position of a complainant. Conduct is considered "unwelcome" if the individual did not request or invite it and considered the conduct to be undesirable or offensive.

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

While it is not possible to list all circumstances that might constitute sexual harassment, the following are some examples of conduct that might constitute sexual harassment depending on the totality of the circumstances:

- Unnecessary, inappropriate or unwelcome physical contact, such as touching, groping, patting, pinching, hugging, kissing, or brushing against an individual's body;
- Verbal abuse, harassing or offensive comments of a sexual nature, including sexual comments, slurs, persistent or pervasive sexually explicit statements, questions, jokes or anecdotes, degrading words regarding sexuality or gender, suggestive or obscene letters, notes, or invitations;
- Visual displays or distribution of lewd or sexually explicit photographs, drawings, pictures, or written materials; or undue and unwanted attention, such as repeated inappropriate flirting, staring, or making sexually suggestive gestures;
- Requests for sexual favors, which may be accompanied by implied or overt threats concerning one's job performance evaluation or promotion;
- Subtle or obvious pressure for unwelcome sexual activities;
- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute unlawful sexual harassment when:
 - Submission to such conduct is made (either explicitly or implicitly) a term or condition of employment;
 - Submission to, or rejection, of such conduct is used as a basis for decisions affecting one's employment; or
 - Such conduct has the purpose or effect of interfering with an individual's work.

For purposes of this Policy, sexual harassment also includes acts that violate an individual's **right to privacy** in connection with her/his body and/or sexual activity such as:

- Recording images (e.g. video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness without that person's consent;
- Disseminating images (e.g. video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to disclosure; or
- Viewing another person's sexual activity, intimate body parts, or naked dressing in a place where that person would have a reasonable expectation of privacy, without that person's consent.

P. Sexual Misconduct for the purposes of this Policy means sexual harassment or sexual violence, as defined herein.

Q. Sexual Violence is an umbrella term that includes: (1) sexual activity without affirmative consent, such as sexual assault, rape/attempted rape, and forcible touching/fondling; (2) dating and domestic violence; and (3) stalking as defined below.

R. Stalking means a course of conduct directed at a specific person that would cause a reasonable person to fear for her, his, or others' safety, or to suffer substantial emotional distress.

APPENDIX A

Mercy College Student Bill of Rights

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

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

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

APPENDIX B

MERCY COLLEGE TITLE IX RESOURCE LIST

EMERGENCY NUMBERS

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

CAMPUS SAFETY NON-EMERGENCY NUMBERS

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

CAMPUS SAFETY MAIN LOCATION

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

TITLE IX COORDINATOR

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

ON-CAMPUS CONFIDENTIAL RESOURCES

Mercy College Health and Wellness Office

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

SEXUAL ASSAULT FORENSIC EXAMINER (SAFE) HOSPITALS

Westchester County

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

The Bronx

- Jacobi Medical Center, 1400 Pelham Parkway, (718) 918-5000

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

Manhattan

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

Queens

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

Brooklyn

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

Staten Island

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

COMMUNITY RESOURCES

The following community resources offer confidential resources for victims of sexual assault, domestic violence, and other forms of sexual violence.

Services include 24/7 hotlines; counseling; advocacy; legal assistance; shelter; medical care; HIV and STD screenings; and assistance working with local police, courts, and area hospitals.

WESTCHESTER

- **WestCOP – Victim Assistance Services**
Office: (914)345-3113
24/7 Hotline: (914) 345-311, Spanish available
24/7 Toll Free Hotline: (855) 827-2255, Spanish available
www.westcop.org

- **Hope's Door**
Office: (914) 747-0818
24/7 Hotline: (888) 438-8700, Spanish available
www.HopesDoorNY.org
- **My Sister's Place**
24/7 Hotline: (800) 298-7233, Spanish available
www.mspny.org
- **Putnam/Norther Westchester Women's Resource Center**
4/7 Hotline: (845) 628-2166, Spanish available
www.pnwwrc.org
- **Westchester County Office for Women**
Office: (914) 995-5972, English
Office: (914) 995-2099, Spanish
After Hours: (914) 995-2099
Sexual Assault Hotline 24/7: (833) 220-2444

NEW YORK CITY

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

- **Rape Crisis & Violence Intervention**
Beth Israel Medical Center
317 East 17th Street (Manhattan)
(212) 420-4516

ADDITIONAL HOTLINES AND RESOURCES

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

ADDITIONAL LEGAL ASSISTANCE

- **Pace Law School Women’s Justice Center** (914) 287-0739
- **Legal Services of Hudson Valley** (877) 574-8529
- **My Sister’s Place Legal Center** (914) 948-8466
- **Westchester Hispanic Coalition** (914) 948-8466
- **Empire Justice Center** (914) 422-4329

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

EXTERNAL AGENCIES TO FILE COMPLAINTS OF SEXUAL MISCONDUCT

- **Office for Civil Rights (OCR)**
US Department of Education
Main Office: (800) 421-3481
Main Email: OCR@ed.gov
New York Office: (646) 428-3800
New York Email: OCR.NewYork@ed.gov
New York Location: 32 Old Slip – 26th Floor, Manhattan

- **New York State Division of Human Rights**
One Fordham Plaza – 4th Floor, Bronx
Main Number, Toll Free: (888) 392-3644
TTD/TTY Number: (718) 741-8300
Email: info@dhr.ny.gov
- **New York City Commission on Human Rights**
Phone: Call 311 or (212) 416-0197 for locations and services
- **United States Equal Opportunity Employment Commission (EEOC)**
Main Number: (800) 669-4000
TTY Number: (800) 669-6820
New York office location: 33 Whitehall Street – 5th floor, Manhattan