

MARIETTA COLLEGE

**PROHIBITED HARASSMENT POLICY
& GRIEVANCE PROCEDURES
FOR FACULTY AND STAFF**

*For questions concerning this document,
Please contact:*

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Scope

This policy applies to all Marietta College employees. Although they cannot be held to the same procedural guidelines, independent contractors, vendors and all guests on the College premises are also expected to comply with this policy. The College will take appropriate action should they fail to do so.

I. **Statement of Beliefs**

The educational process is a College-wide enterprise based on mutual understanding and respect, and a sense of shared responsibility of all its members. Marietta College is committed to providing faculty, staff, and students with a community and living environment where work and study are free from all forms of prohibited harassment including: sexual harassment; discriminatory harassment; bullying/cyberharassment; stalking/cyberstalking; hazing; sexual misconduct; and retaliatory harassment. Therefore, Marietta College affirms its belief that:

- A. Prohibited harassment is included under the heading of unprofessional conduct threatening the academic freedom of others;
- B. Harassment can be illegal under federal and state law, demeans all persons involved, and impairs the academic mission of the College. Therefore, it will not be tolerated; and
- C. Prohibited harassment is a problem which requires distinct mechanisms to seek redress, as well as protection for the accused.

The College is an environment in which learning takes place and is therefore dedicated to ensuring that free discussion of the widest possible nature takes place. Consequently, prohibited harassment of any kind is not condoned because it tends to inhibit open inquiry and the free expression of ideas by those who are harassed or mistreated. The College acknowledges that frank and open discussion of social, cultural, artistic, religious, scientific, and political issues may be disturbing for some individuals. In such instances, the principle of free exchange and inquiry takes precedence because it is fundamental to the educational enterprise. The expression of offensive ideas is not, in itself, prohibited harassment.

II. **Definitions of Prohibited Harassment**

Prohibited harassment is severe and/or pervasive unwelcome behavior which creates an environment that intimidates or is hostile or offensive to a person or persons because of age, race, color, national or ethnic origin, disability, sex, gender identity, gender expression, sexual orientation, religious affiliation, veteran status, genetic information, or any other legally-protected status. The campus community will not tolerate prohibited harassment of any kind. There are several variations of prohibited harassment including:

- A. **Sexual Harassment**—Unwelcome sexual advances, requests for favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when:
 - 1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or education; or
 - 2) Submission to or rejection of such conduct by an individual is used as the basis for academic or employment decisions affecting the individual; or
 - 3) Such conduct has the purpose or effect of interfering with an individual's academic, professional, or work performance; or
 - 4) Such conduct has the purpose or effect of creating an intimidating, hostile, or offensive employment, educational, or living environment.

- B. Discriminatory Harassment**—Verbal or physical conduct that demeans or shows hostility or aversion toward an individual because of his or her age, race, color, national or ethnic origin, disability, sex, gender identity, gender expression, sexual orientation, religious affiliation, veteran status, or any other protected status or facet of personal identity that:
- 1) Has the purpose or effect of creating an intimidating, hostile, or offensive working or learning environment; or
 - 2) Has the purpose or effect of unreasonably interfering with an individual’s work or academic performance; or
 - 3) Otherwise adversely affects an individual’s learning environment or employment opportunities.
- C. Bullying and Cyberharassment**—Any written, verbal, physical, or electronically-distributed act that one individual has exhibited toward another individual where the behavior:
- 1) Causes mental or physical harm to the other individual; or
 - 2) Is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive educational or work environment for the other individual.
- D. Stalking and Cyberstalking**—A pattern of conduct or electronically-distributed information that knowingly causes another person to believe that the offender will cause physical harm or mental distress to the other person. (Depending upon the circumstances, stalking may either be a fourth degree felony or a first degree misdemeanor in the state of Ohio.) Examples include, but are not limited to:
- 1) Following the victim
 - 2) Using GPS-enabled smartphones to monitor the victim’s whereabouts
 - 3) Repeatedly driving past the victim’s residence
 - 4) Making harassing phone calls; sending threatening or harassing letters, emails, text messages, social media postings, etc.
 - 5) Harming/threatening the victim’s family members or friends
 - 6) Harming the victim’s pets
 - 7) Vandalizing the victim’s property
 - 8) Trespassing or burglarizing the victim’s residence or work place
 - 9) Leaving threatening notes or objects for the victim
 - 10) Verbally threatening the victim
- E. Hazing**—Doing any act or coercing another, including the victim, to do any act of initiation into any organization that causes or creates a substantial risk of causing mental or physical harm to any person. No person shall recklessly participate in the hazing of another. (In the state of Ohio, hazing is a misdemeanor of the fourth degree.)
- F. Sexual Misconduct**—Includes several different offenses:
- 1) **Non-Consensual Sexual Intercourse:** Any sexual intercourse (anal, oral or vaginal), however slight, with any object, by a man or a woman upon a man or a woman, without effective consent.
 - 2) **Non-Consensual Sexual Contact:** Any sexual touching, however slight, with any object, by a man or a woman, upon a man or a woman, without effective consent.

- 3) **Sexual Exploitation:** Occurs when an individual takes nonconsensual, unjust or abusive sexual advantage of another for his/her own benefit, or for the benefit or advantage of anyone other than the one being exploited, and that behavior does not otherwise constitute non-consensual sexual contact, non-consensual sexual intercourse, or sexual harassment. Examples include but are not limited to:
 - a) Coercing prostitution
 - b) Non-consensual videotaping of sexual encounters
 - c) Going beyond the boundaries of consent (i.e., secretly allowing others to observe sex acts)
 - d) Voyeurism
 - e) Transmission of HIV or STIs
 - f) Inducing incapacitation for the purpose of having sex with the incapacitated person (misconduct occurs regardless of whether sexual activity actually takes place)
- 4) **Definitions of Key Sexual Misconduct Terms:**
 - a) **Intercourse**—includes vaginal penetration by a penis, object, tongue or finger; anal penetration by a penis, object, tongue or finger; and oral copulation (mouth to genital contact or genital to mouth contact)
 - b) **Sexual Touching**—includes any sexual contact with the breasts, buttocks, groin, genitals, mouth or other bodily orifice of another, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.
 - c) **Effective Consent**—informed, freely and actively given, mutually understandable words or actions, which indicate a willingness to engage in mutually agreed upon sexual activity.
 - i. One may not engage in sexual activity with another who is known or should reasonably be known to be mentally or physically incapacitated.
 - ii. Consent may never be given by a minor.
 - iii. Consent can be modified or withdrawn. Consent to one activity does not necessarily imply consent to another activity.
 - d) **Force**—the use of physical violence and/or imposing on someone physically to gain sexual access. Force includes threats, intimidation (implied threats), and coercion (unreasonable pressure) that overcome resistance or produce consent.
 - e) **Incapacitation**—a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., the ability to understand the “who, what, when, where, why or how” of their sexual interaction).

G. Retaliatory Harassment: Intentional action taken by an accused individual or allied third party, absent legitimate non-discriminatory purposes, that harms an individual as reprisal for filing or participating in a civil rights grievance proceeding. In order to make a claim of retaliation, the Complainant must show:

- 1) S/he engaged in statutorily protected expression (e.g., filed a complaint);
- 2) S/he suffered an adverse action; and

3) There is a causal link between the protected expression and the adverse action. Sanctions may be levied against individuals who have retaliated against the Complainant or any of the witnesses.

III. Policy Expectations

This policy is based upon the premise that members of the Marietta College community, guests, and visitors have the right to be free from prohibited harassment. Therefore, all members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. To that end, the prohibited harassment policy requires action, either informal or formal, as a means to protect the entire College community.

A. Policy Expectations With Respect to Physical Sexual Misconduct

The expectations of our community regarding sexual misconduct can be summarized as follows: In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing, and voluntary consent prior to and during sexual activity. Consent is sexual permission. Consent can be given by word or action, but non-verbal consent is not as clear as talking about what you want sexually and what you don't. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Silence--without actions demonstrating permission—should not be assumed to show consent.

Additionally, there is a difference between seduction and coercion. Coercing someone into sexual activity violates this policy in the same way as physically forcing someone into sex. Coercion happens when someone is pressured unreasonably for sex.

Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) because they lack the capacity to reasonably understand the situation. Individuals who consent to sex must be able to understand what they are doing. Under this policy, "No" always means "No," and "Yes" may not always mean "Yes." Anything but a clear, knowing and voluntary consent to any sexual activity is equivalent to a "No."

B. Policy Expectations With Respect to Consensual Relationships Between Individuals in Unequal Positions

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as teacher and student, supervisor and 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 the faculty/staff handbooks. 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 are generally discouraged.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party create a perceived, if not actual, conflict of interest. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their own supervisor, which will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities, or shift the individual 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. While no relationships are prohibited by this policy, failure to self-report such relationships to a supervisor as required can result in disciplinary action for an employee. Finally, it may be the case that accommodations are undesirable or impractical and, as a result, the relationship renders the employee with supervisory or evaluative authority unqualified for his or her position, in which case the College may conclude such employee's employment.

C. Marietta College's Response to Allegations of Prohibited Harassment

The College reserves the right to take whatever measures it deems necessary in response to an allegation of prohibited harassment in order to protect individuals' rights and personal safety. Not all forms of prohibited harassment will be deemed to be equally serious offenses, and the College reserves the right to impose different sanctions, ranging from verbal warning to termination, depending upon the severity of the offense. The College will consider the concerns and rights of both the Complainant and the person accused (Respondent) of prohibited harassment.

D. Marietta College as Complainant

As necessary, Marietta College reserves the right to initiate a complaint and conduct an investigation without a formal complaint by the victim of misconduct.

IV. Confidentiality, Privacy, and Reporting Policy

A. Privacy—Prohibited harassment complaints will be handled as discreetly as practicable under the circumstances. Information will only be shared on a need-to-know basis and as provided for by College policy and applicable federal and state law.

B. Confidential Assistance—Prior to or concurrent with lodging a complaint, individuals may find it helpful to consult with a counselor, a healthcare provider, or a member of the clergy. Unless there is an imminent threat of bodily harm to self or others, these sources can maintain your confidentiality. Employees may also wish to contact one of the following confidential resources:

- 1) EVE—a local agency that provides free services to survivors of domestic violence or sexual assault can be reached at (740) 374-5820;
- 2) Mutual of Omaha's Employee Assistance Program—a free service for our employees and their immediate and dependent family members available 24/7 by calling 1-800-316-2796. EAP staff members are highly trained, master's level

professionals who will assess your situation, provide support, and, if needed, refer you to other helpful resources. They can also provide a referral for three no-cost, face-to-face sessions with a licensed counselor.

C. **Reporting Options**—An employee wishing to either discuss or lodge a complaint of prohibited harassment should take one of the following steps:

- 1) File a confidential report through EthicsPoint, a comprehensive reporting tool that allows the Complainant to either self-identify or to maintain anonymity. Reports can be made online at www.ethicspoint.com or by calling toll-free 1-888-317-8064. EthicsPoint is available 24 hours a day, 365 days a year.
 - a) **NOTE: The College may not be able to investigate an anonymous complaint unless sufficient information is furnished to enable the College to conduct a meaningful and fair investigation.**
- 2) Directly contact one of the following College Officials as applicable:
 - a) The Title IX Coordinator at (740) 376-4899 (for Complainants who are student employees)
 - i. **NOTE: Dependent upon the circumstances and the individual's capacity as a student, as an employee, or both, the Title IX Officer will determine whether this "Prohibited Harassment Policy and Grievance Procedures for Faculty and Staff" applies to the case, or whether the student "Sexual Misconduct Policy and Grievance Procedures" is the more appropriate policy.**
 - b) The Director of Human Resources at (740) 376-4835 (for Complainants who are non-faculty employees)
 - c) The Provost and Dean of the Faculty at (740) 376-4741 (for Complainants who are faculty members)
 - d) **NOTE: The Title IX Coordinator serves as consultant to both the Director of Human Resources and the Provost and Dean of the Faculty on all prohibited harassment complaints.**

D. **DUTY TO REPORT:** Please note that the College expects any employee with good reason to believe that an individual has been sexually assaulted, has been subjected to severe or pervasive harassment, or has otherwise been discriminated against to report that belief to one of the afore-mentioned College Officials or, in the case of a potential sexual assault or abuse, to Campus Police.

E. **DUTY TO ACT:** The College is legally required to take appropriate action in response to specific allegations of harassment, sexual assault, or abuse. Consequently, individuals who bring forward complaints under this policy must understand that it is likely that the College will have to take investigative action and that the employee will be expected to cooperate in any such proceeding. EMPLOYEES wishing to discuss an incident that happened to them in confidence may use the option above (see Sec. V.B.) or consult with a clergy member, counselor, or medical professional who is legally able to receive such complaints in confidence.

F. **Review and Investigation of Complaints**—The College Officials noted above in Section V.C.2 who receive a complaint of prohibited harassment will take the following action:

- 1) Provide the Complainant with a copy of the policy and procedures governing prohibited harassment;
- 2) Conduct a thorough internal investigation which includes meeting separately with the Complainant, Respondent, and pertinent witnesses, and reviewing and analyzing relevant documents as they relate to each allegation of the complaint. The College Official will seek to complete his or her investigation within 14 calendar days (excluding College closures for holidays or emergencies), though more time may be needed depending on the academic calendar or logistical considerations.
- 3) At the conclusion of the investigation, the College Official will prepare a draft summary of the evidence gathered during the investigation. The Complainant and Respondent will each receive a copy and be given three (3) business days to review the summary and to submit comments on that draft to the College Official. The College Official shall then address any identified factual inaccuracies and misunderstandings, supported by evidence, as identified by either party.
- 4) Following the receipt of any comments submitted, or after the three (3) business day comment period has lapsed without comment, the College Official will make a determination via formal written report regarding the merit of the allegations. This formal written report shall be completed within (5) business days, given to each party, and shall contain:
 - a) A summary of the Complainant's relevant allegations;
 - b) A summary of the Respondent's relevant statements in response to the allegations;
 - c) A description of the relevant information provided by witnesses or obtained from documents, including comments submitted in response to the draft summary of the evidence; and
 - d) The College Official's analysis, findings of fact, and recommended sanction.
 - i. **Evidentiary Standard**--The College Official's findings of fact will be made using the "preponderance of the evidence" standard, meaning that it is more likely than not that a violation of the prohibited harassment policy has occurred.
- 5) **Appeal**—The Respondent has the right to appeal under specific circumstances by giving the College Official written notification within three (3) business days of receipt of the sanctions, as follows:
 - a) Respondents who are Faculty employees found to be in violation of this policy and who have been recommended for termination/dismissal should refer to and follow the hearing and appeals procedures outlined in Sec. VII.D.2 of the Faculty Handbook.
 - b) In all other situations, Respondents found in violation of this policy may only appeal: 1) on the basis of procedural error; or 2) in the event there is new evidence that was not previously available. The College Official shall forward the written appeal to the Vice President for Diversity and Inclusion.
 - i. The Vice President for Diversity and Inclusion will review all of the relevant documentation gathered from the investigation as well as any new evidence. S/he may re-interview individuals as deemed necessary in order to make an informed decision.
 - ii. Within 14 calendar days of receiving the appeal (excluding College closures for holidays or emergencies), the Vice President for

Diversity and Inclusion shall prepare a written response taking one of the following courses of action:

- i. Amend the sanction
- ii. Dismiss the sanction
- iii. Uphold the sanction

c) **Decisions made at the end of the appeals phase are final and binding.**

V. Record Keeping

- A. Only those incidents that result in formal sanctions where the Respondent is found to be responsible shall become part of the Respondent's official personnel file.
- B. All other investigatory documentation shall be held in a locked file cabinet by the appropriate College Official.

VI. False Reports

Marietta College will not tolerate intentional false reporting of incidents. It is a violation of this policy to make an intentionally false report, and it may also violate state criminal statutes and civil defamation laws. Sanctions for filing a false report under this policy may include termination of employment.

VII. Education and Training

It shall be the responsibility of the President to ensure and support that campus-wide educational programs are conducted annually as follows:

- A. The Vice President and Dean for Student Life will have general oversight for the development and coordination of educational programs for the student body on the topic of prohibited harassment and sexual misconduct.
- B. The Provost shall be responsible to see that the faculty devotes at least one faculty meeting to the discussion of prohibited harassment and sexual misconduct, a review of applicable College policies and procedures, and a discussion of the methods for the prevention of prohibited harassment and sexual misconduct.
- C. The Director of Human Resources shall be responsible to see that all administrative and support staff meet annually to review the prohibited harassment policy statement, develop an understanding of what constitutes prohibited harassment, learn the provisions for addressing possible prohibited harassing behavior and situations, and discuss the methods for the prevention of prohibited harassment and sexual misconduct.

VIII. Procedures for Amendment

No amendment or revision to this document shall be effective until it has been approved by a two-thirds vote of Faculty Council, a two-thirds vote of Student Senate, approval by the President, and approval by the Board of Trustees. The Master Document shall be maintained in the office of the Title IX Coordinator.

Approved by President's Cabinet, 1/15/13. Approved by Faculty Council and Student Senate, 1/30/13. Approved by the Board of Trustees, 2/21/13.