

**MARIETTA COLLEGE
POLICY ON
GENDER-BASED HARASSMENT,
DISCRIMINATION, AND MISCONDUCT**

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POLICY ON GENDER-BASED HARASSMENT, DISCRIMINATION, AND MISCONDUCT

As used in this document, the term “reporting party” refers to the person impacted by the alleged discrimination. The term “responding party” refers to the person who has allegedly engaged in discrimination. The term “report” and “allegation” are used interchangeably and denote information provided to the College regarding conduct that may have violated this policy.

Rationale for This Policy

Marietta College is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from discrimination, harassment, and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational enterprise, Marietta College has developed internal policies and procedures that will provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of protected class status. Marietta College values and upholds the equal dignity of all members of its community, and strives to balance the rights of the parties in what is often a difficult time for all those involved.

Applicable Scope

The core purpose of this policy is the prohibition of all forms of discrimination. Sometimes, discrimination involves exclusion from activities, such as admission, athletics, or employment advancement. Sometimes, discrimination takes the form of harassment or, in the case of gender-based discrimination, it encompasses sexual violence, stalking, sexual exploitation, or intimate partner violence. When violation of these anti-discrimination policies is alleged, the allegations are subject to resolution using Marietta College’s resolution process as detailed below.

When the responding party is a member of the Marietta College community, the resolution process is applicable regardless of the status of the reporting party, who may or may not be a member of the Marietta College community. This community includes, but is not limited to, students,¹ student organizations, faculty, administrators, staff, guests, visitors,

¹ For the purpose of this policy, Marietta College defines “student” as any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and/or who maintains an ongoing relationship with the College.

contractors, vendors, volunteers, invitees, and campers. The procedures below may be applied to incidents, to patterns, and/or to the climate, all of which may be addressed and investigated in accordance with this policy.

Title IX Coordinator

Dr. Richard Danford serves as the Title IX Coordinator and has the primary responsibility for coordinating the College’s efforts related to investigation, resolution, and implementation of corrective measures and monitoring that are intended to stop, remediate, and prevent any discrimination, harassment, and/or retaliation as prohibited under this policy.

Independence and Conflict-of-Interest

The Title IX Coordinator manages the Title IX Team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and acts to ensure that all College representatives act with objectivity and impartiality and are assessed with respect to conflicts of interest and/or potential bias. To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact Marietta College President Dr. William Ruud at (740) 376-4701. Concerns of bias or a potential conflict of interest by any other administrator involved in the resolution process should be raised with the Title IX Coordinator.

Reports of misconduct or discrimination committed by the Title IX Coordinator should be reported to Marietta College President Dr. William Ruud at (740) 376-4701. Reports of misconduct or discrimination committed by President Ruud should be reported to the Chair of the Marietta College Board of Trustees. Reports of misconduct or discrimination committed by any other administrator involved in the resolution process should be reported to the Title IX Coordinator.

Administrative Contact Information

Allegations of violations of policy, or inquiries about or concerns regarding this policy and procedure, may be made internally to:

Dr. Richard Danford
Title IX Coordinator
Vice-President for Student Life
102 Andrews Hall
(740) 376-4899
danfordr@marietta.edu

Amanda Mullen
Deputy Title IX Coordinator
Associate Dean of Students
112 Andrews Hall
(740) 376-4642
am002@marietta.edu

Debra Wayland
Deputy Title IX Coordinator
Assistant Vice-President for Administrative Services
3rd Floor Irvine, Human Resources Suite
(740) 376-4835
dce001@marietta.edu

Jenn Castle
Deputy Title IX Coordinator
Senior Women's Administrator and Head Coach – Softball
Dyson Baudo Recreation Center 203
(740) 376-4668
ja003@marietta.edu

Inquiries may be made externally to:

Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1100
Customer Service Hotline #: (800) 421-3481
Facsimile: (202) 453-6012
TDD#: (877) 521-2172
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

Office for Civil Rights, *Cleveland Office*
U.S. Department of Education
600 Superior Ave. East, Suite 750
Cleveland, OH 44114-2611
Telephone: 216-522-4970
Fax: 216-522-2573

TDD: 877-521-2172

E-mail: OCR.Cleveland@ed.gov Web:

<http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>

Equal Employment Opportunity Commission (EEOC)

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

Equal Employment Opportunity Commission (EEOC), *Cleveland Office*

Anthony J. Celebrezze Federal Building

1240 E. 9th Street, Suite 3001

Cleveland, OH 44199

Telephone: 1-800-669-4000

Fax: 216-522-7395

TDD: 1-800-669-6820

ASL Video Phone: 844-234-5122

Public Portal: <https://publicportal.eeoc.gov/portal/>

Reporting Discrimination, Harassment, and/or Retaliation

Reports of discrimination, harassment, and/or retaliation may be made using any of the following options:

- 1) Report directly to the Title IX Coordinator or deputies:

Dr. Richard Danford
Title IX Coordinator
Vice-President for Student Life
102 Andrews Hall
(740) 376-4899
danfordr@marietta.edu

Amanda Mullen
Deputy Title IX Coordinator
Associate Dean of Students
112 Andrews Hall
(740) 376-4642
am002@marietta.edu

Debra Wayland
Deputy Title IX Coordinator
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Senior Women's Administrator and Head Coach – Softball
Dyson Baudo Recreation Center 203
(740) 376-4668
ja003@marietta.edu

- 2) Report online, using the reporting form posted at https://cm.maxient.com/reportingform.php?MariettaCollege&layout_id=2.
- 3) Report using Ethics Point by calling 1-888-317-8064 or going online to www.ethicspoint.com.
- 4) Report to the Marietta College Police Department by calling 740-376-3333 or e-mailing mcpd@marietta.edu.
- 5) If you are a student, report to any employee of Marietta College, including your RA if you live in a residence hall. If you are an employee, report to your supervisor.

All reports are acted upon promptly, and every effort is made by the College to preserve the privacy of reports.²

Anonymous Reporting

Reports may also be made anonymously, without identification of the reporting party. Anonymous reports will be preliminarily investigated to the extent possible, both to assess

² For the purpose of this policy, privacy and confidentiality have distinct meanings. **Privacy** means that information related to an allegation will be shared with a limited number of College employees who “need to know” in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in the College’s response to allegations under this policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (“FERPA”), as outlined in the College’s FERPA policy. The privacy of employee records will be protected in accordance with Human Resources practices. **Confidentiality** exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The College has designated individuals who have the ability to have privileged communications as confidential resources. For more information about confidential resources, see page 20. When information is shared by an individual with a confidential resource, the confidential resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual gives written consent for its disclosure; (ii) there is a concern that the individual will likely cause serious physical harm to self or others; or (iii) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18.

the underlying allegation(s) and to determine if remedies can be provided. However, anonymous complaints typically limit the College's ability to investigate, respond, and provide remedies, depending on what information is shared. Additionally, all employees of the College, with the exception of those who are designated as confidential resources, are mandated reporters and must promptly share all known details of a report with the Title IX Coordinator.

Confidentiality and mandated reporting are addressed more specifically below (page 20).

Time Limits on Reporting

There is no time limitation on reporting allegations to the Title IX Coordinator. However, if the responding party is no longer subject to the College's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited. Acting on allegations significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer resources and/or remedies, and/or engage in informal or formal action, as appropriate. When a significant time delay impacts the reporting of alleged misconduct, the College will apply the policy in place at the time of the alleged misconduct, and the procedures in place at the time the misconduct is reported.

Jurisdiction of the College

This policy applies to conduct that takes place on the campus or on property owned or controlled by the College or at College-sponsored events. It may also apply to off-campus and to online conduct when the Title IX Coordinator determines that the conduct affects a substantial institutional interest. Regardless of where the conduct occurred, the College will address all allegations to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus program or activity. A substantial College interest includes:

- a) Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- b) Any situation in which it appears that the responding party may present a danger or threat to the health or safety of self or others;
- c) Any situation that significantly impinges upon the rights, property, or achievements of self or others or significantly breaches the peace and/or causes social disorder; and/or
- d) Any situation that is detrimental to the educational interests of the College.

If the responding party is unknown or is not a member of the College community, the Title IX Coordinator will assist the reporting party in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report. In addition, the College may take other actions as appropriate to protect the reporting party against such third parties, such as barring the latter from College property and/or events. All vendors serving the College through third-party contracts are subject to the policies and procedures of Marietta College.

When the responding party is enrolled in or works at another institution, the Title IX Coordinator can assist the reporting party in liaising with the appropriate individual for that institution, as it may be possible to allege violations through that institution's policies.

Similarly, the Title IX Coordinator may be able to advocate for a student or employee reporting party who experiences discrimination in an externship, study abroad program, or other environment external to the College where sexual harassment policies and procedures of the facilitating organization may give recourse to the reporting party. Further, even when the responding party is not a member of the College's community, remedies and resources can be accessed by contacting the Title IX Coordinator.

Online Harassment and Misconduct

Any online postings or other electronic communication by students occurring completely outside of the College's control (e.g., not on College networks, websites, or between College email accounts) will only be subject to this policy when such online conduct can be shown to cause a substantial on-campus disruption. This includes instances of cyber-bullying, cyber-harassment, cyber-stalking, etc. Any online postings or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring within the College's control (e.g., on College networks, websites, or between College email accounts) will be subject to this policy when such online conduct can be shown to cause a substantial on-campus disruption.

Off-campus discriminatory or harassing speech by employees, whether online or in person, may be regulated by the College only when such speech is made in an employee's official or work-related capacity. On-campus discriminatory or harassing speech by employees, whether online or in person, may be regulated by the College only when such speech can be shown to cause a substantial on-campus disruption.

Marietta College adheres to the principles set forth in AGB's Freedom of Speech on Campus: Guidelines for Governing Boards and Institutional Leaders. (2017)

1. Marietta College Policy on Nondiscrimination

Marietta College adheres to all federal and state civil rights laws and regulations prohibiting discrimination in private institutions of higher education. Marietta College does not

discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of race, religion, color, sex, pregnancy, religion, ethnicity, national origin, citizenship status, physical or mental disability (including perceived disability), age, sexual orientation, gender identity, gender expression, veteran or military status or any other protected category under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any resolution process on campus, with the Equal Employment Opportunity Commission, or other human rights agencies.

This policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the College community who acts to deny, deprive, or limit the educational or employment or residential and/or social access, benefits, and/or opportunities of any member of the College community, guest, or visitor on the basis of their actual or perceived membership in the protected classes listed above is in violation of the institutional policy on nondiscrimination.

When brought to the attention of the College, any such discrimination will be promptly and fairly addressed and remedied by the College according to the resolution process described below.

2. Marietta College Policy on Discriminatory Harassment

Students, staff, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. Marietta College's harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane but controversial or sensitive subject matters protected by academic freedom. The sections below describe the specific forms of legally prohibited harassment that are also prohibited under College policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of College policy, though remedies may be offered to those impacted.

a. Discriminatory Harassment

Discriminatory harassment constitutes a form of discrimination that is prohibited by College policy. Discriminatory harassment is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a class protected by policy or law. Marietta College does not tolerate discriminatory harassment of any employee, student, visitor, or guest. Marietta College will act to remedy all forms of discriminatory harassment when reported, whether or not the harassment rises to the level of creating a hostile environment. When discriminatory harassment rises to the level of creating a hostile environment, Marietta College may also impose sanctions on the responding party through application of the appropriate resolution process.

A hostile environment is one that unreasonably interferes with, limits, or denies an individual's educational or employment access, benefits, or opportunities. This discriminatory effect results from harassing verbal, written, graphic, or physical conduct that is severe and/or persistent and/or pervasive, **and** objectively offensive.

The College reserves the right to address offensive conduct and/or harassment that 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature not based on a protected status. Addressing such conduct will not result in the imposition of discipline under institutional policy, but may be addressed through respectful conversation, remedial actions, education, effective conflict resolution, and/or other informal resolution mechanisms. For assistance with conflict resolution and other informal resolution techniques and approaches, employees should contact the Director of Human Resources, and students should contact the Associate Dean of Students/Director of Community Living.

b. Sexual Harassment

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of Ohio regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice. Marietta College has adopted the following definition of Sexual Harassment in order to address the special environment of an academic community, which consists not only of employer and employees, but of students as well.

Sexual Harassment is:

- unwelcome,
- sexual, sex-based and/or gender-based,
- verbal, written, online and/or physical conduct.

Sexual Harassment -- The Reporting Standard

Anyone experiencing Sexual Harassment in any College program is encouraged to report it immediately to the Title IX Coordinator or a deputy. Remedies, education, and/or training may be provided in response. Discipline is not typically imposed for Sexual Harassment as defined in this section unless it meets the disciplinary standard below by creating a hostile environment.

Hostile Environment – The Disciplinary Standard

Sexual Harassment may be disciplined when it creates a hostile environment, takes the form of *quid pro quo* harassment, and/or is retaliatory harassment.

A hostile environment is created when Sexual Harassment is:

- Severe, and/or
- persistent and/or
- pervasive **and**
- objectively offensive, such that it:
 - unreasonably interferes with, denies, or limits the ability to participate in or benefit from the College's educational, employment, social, and/or residential programs.

Quid Pro Quo Sexual Harassment:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by a person having power or authority over another constitutes *quid pro quo* Sexual Harassment when submission to such sexual conduct is made either explicitly or implicitly a term or condition of an individual's work or educational development or performance, or evaluation thereof.

Some examples of possible Sexual Harassment include:

- A professor insists that a student have sex with them in exchange for a good grade. This constitutes Sexual Harassment regardless of whether the student accedes to the request and irrespective of whether a good grade is promised or a bad grade is threatened.
- A student repeatedly sends graphic, sexually-oriented jokes around campus to an email list they created, even after being asked to stop. Because of these jokes, one email list recipient avoids the sender on campus and in the residence hall in which they both live.
- Explicit sexual pictures are repeatedly displayed in a professor's office or on the exterior of a residence hall door.
- Two supervisors frequently 'rate' several employees' bodies and sex appeal, commenting suggestively about their clothing and appearance, in the presence of other employees.
- A professor engages students in her class in discussions about their past sexual experiences, yet the conversations are not in any way germane to the subject matter of the class. She inquires about explicit details and demands that students answer her, though they are clearly uncomfortable and hesitant.
- An ex-girlfriend widely spreads false stories about her sex life with her former partner to the clear discomfort and frustration of the partner, turning the former partner into a social pariah on campus.
- A student grabbed another student by the hair, then grabbed her breast and put his mouth on it. While this is Sexual Harassment, it is also a form of sexual violence.

Unwelcomeness and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced.

Employees are reminded of the College's policy on consensual romantic or sexual relationships, which can be found on the Document Depot at MyMarietta (<https://mymarietta.marietta.edu/collaboration/docdepot/Pages/MariettaCollegeDocuments.aspx>). Alleged violations of this policy will only become a Title IX matter if there is a question of *quid pro quo* sexual harassment, creation of a hostile environment, and/or retaliation.

c. Sexual Misconduct

State law defines various violent and/or non-consensual sexual acts as crimes. While some of the policies listed below may have parallels in criminal law, Marietta College has defined categories of gender-based discrimination as forms of sexual misconduct, for which disciplinary action under this policy may be imposed.

Generally speaking, Marietta College considers non-consensual sexual intercourse policy violations to be the most serious of these offenses, and therefore typically imposes the most severe sanctions, including suspension or expulsion for students and termination for employees. However, Marietta College reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any act of sexual misconduct or other gender-based offenses, including intimate partner (dating and/or domestic) violence, non-consensual sexual contact, and/or stalking based on the facts and circumstances of the particular allegation.

Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Violations include:

- i. Sexual Harassment (as defined in section b above)**
- ii. Non-Consensual Sexual Intercourse**

Defined as:

- any sexual intercourse
- however slight
- with any object
- by a person upon another person
- that is without consent and/or by force

Sexual intercourse includes:

- Vaginal or anal penetration by a penis, tongue, finger, or object, or oral copulation (mouth to genital contact) no matter how slight the penetration or contact.

- iii. Non-Consensual Sexual Contact**

Defined as:

- any intentional sexual touching
- however slight

- with any object
- by a person upon another person
- that is without consent and/or by force

Sexual touching includes:

- Intentional contact with the breasts, groin, genitals, or mouth, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or
- Any other intentional bodily contact in a sexual manner.

Under Ohio law, sexual assault is covered by two separate terms, “rape” and “sexual battery.” The use of either of these terms is applicable to criminal prosecutions for sexual assault in Ohio, and both are also covered under the College’s definition of non-consensual sexual contact.

iv. Force and Consent

Force: Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you.” “Okay, don’t hit me, I’ll do what you want.”).

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

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

Consent: Consent is knowing, voluntary, and clear permission by word or action to engage in sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the College to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to BDSM or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so Marietta College’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

There is no specific legal definition of “consent” in the state of Ohio. However, submission to sexual conduct as a result of fear may be sufficient in proving lack of consent for legal purposes. Consent for the purposes of Marietta College’s Policy on Gender-Based Harassment, Discrimination, and Misconduct will be understood using the definition and explanations provided immediately above.

Incapacitation: A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including by alcohol or other drugs. A person violates this policy if they engage in sexual activity with someone they know to be, or should know to be, physically or mentally incapacitated.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g. to understand the “who, what, when, where, why, or how” of their sexual interaction). Incapacitation is determined through consideration of all relevant indicators of an

individual's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

Intoxication of the Responding Party

It is not an excuse that the responding party was intoxicated and, therefore, did not realize the incapacity of the reporting party. The question of whether the responding party should have known of the incapacity is an objective question about what a reasonable person, exercising sober, good judgment, would have known, in the same or similar circumstances.

Protection of Minors

In the state of Ohio, nobody under the age of 16 is considered legally able to consent to sexual activity. This means that sexual contact in Ohio by an adult (someone age 18 or older) with a minor (someone younger than 18 years of age) may be a crime, if that minor was under the age of 16 and/or the sexual contact was non-consensual. Knowledge of such alleged sexual misconduct under Ohio law could require an immediate report to the applicable child welfare agency, and it also represents a potential violation of Marietta College's Policy, even if the minor consented to the sexual activity.

Examples of Sexual Misconduct:

Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00 p.m. until 3:00 a.m., Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. Despite her clear communications that she is not interested in doing anything sexual with him, Bill keeps at her, questions her religious convictions, and accuses her of being "a prude." He brings up several rumors that he has heard about how she performed oral sex on a number of other guys. Finally, it seems to Bill that her resolve is weakening, and he convinces her to "jerk him off" (hand to genital contact). Amanda would never had done it but for Bill's incessant advances. He feels that he successfully seduced her and that she wanted to do it all along, but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn't want it, she could have left.

Bill is responsible for violating the College's Non-Consensual Sexual Contact policy. It is likely that campus decision-makers would find that the degree and duration of the pressure Bill applied to Amanda were unreasonable and that he coerced Amanda into performing unwelcome sexual touching upon him. When sexual activity is coerced, it

is forced. Consent is not valid when forced. Sexual contact without consent is sexual misconduct.

Chris has recently transitioned from male to non-binary, but primarily expresses as a woman. Since their transition, Chris has noticed that their African Studies professor, Dr. Mukembo, pays them a lot more attention. Chris is sexually attracted to Professor Mukembo, and believes the attraction is mutual. Chris decides to act on the attraction. One day, Chris visits Dr. Mukembo during office hours, and after a long conversation about being trans, Chris kisses Dr. Mukembo. Dr. Mukembo is taken aback, stops the kiss, and tells Chris not to do that. He explains to Chris that he is not interested in Chris sexually or romantically. Chris takes it hard, crying to Dr. Mukembo about how hard it is to find someone who is interested in them now that they have transitioned. Dr. Mukembo feels sorry for Chris and softens the blow by telling them that no matter whether he likes Chris or not, faculty-student relationships are prohibited by the university. Chris takes this as encouragement. One night, Chris goes to a gay bar some distance from campus, and sees Dr. Mukembo at the bar. Chris tries to buy him a drink and, again, tries to kiss Dr. Mukembo. Dr. Mukembo leaves the bar abruptly. The next day, Chris makes several online posts that out Dr. Mukembo as gay and raise questions about whether he is sexually involved with students. Dr. Mukembo contacts the Title IX Office and alleges that Chris is sexually harassing him.

Chris is responsible for violating the College's Sexual Harassment policy. Chris is engaging in unwelcome conduct of a sexual nature. Being kissed, repeatedly, by someone you have told not to kiss you is persistent conduct that would be objectively offensive to a reasonable person. Whether it is severe enough to create a hostile environment depends on whether Dr. Mukembo experiences a tangible employment detriment from the conduct, but being outed and falsely accused of improper relationships with students is certainly severe enough to create a hostile work environment on the basis of sex for Dr. Mukembo.

Jiang is a junior at the College. Beth is a sophomore. Jiang comes to Beth's residence hall room with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Beth are alone. They hit it off, soon become more intimate, and start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a baby-sitter when she was five, and avoids sexual relations as a result, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with her, Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop, but cannot. Beth is stiff and unresponsive during the intercourse. Is this a policy violation?

Jiang would be held responsible in this scenario for engaging in Non-Consensual Sexual Intercourse. It is the duty of the sexual initiator, Jiang, to make sure that he has mutually understandable consent to engage in sexual activity. Here, Jiang had no verbal or non-verbal mutually understandable indication from Beth that she consented to sexual intercourse. It is important to be as clear as possible as to

whether or not sexual contact is desired, and to be aware that for psychological reasons or because of alcohol or drug use, one's partner may not be in a position to provide as clear an indication as the policy requires. As the policy makes clear, consent must be actively, not passively, given.

Kevin and John are at a party. Kevin is not sure how much John has been drinking, but he is pretty sure it's a lot. After the party, he walks John to his apartment, and John comes on to Kevin, initiating sexual activity. Kevin asks him if he is really up to this, and John says yes. They remove each other's clothes and they end up in John's bed. Suddenly, John runs for the bathroom. When he returns, his face is pale, and Kevin thinks he may have thrown up. John gets back into bed, and they begin to have sexual intercourse. Kevin is having a good time, though he can't help but notice that John seems pretty groggy and passive, and he thinks John may have even passed out briefly during the sex, but he came to again. When Kevin runs into John the next day, he thanks him for the great night. John remembers nothing and decides to make a report to the Dean.

This is a violation of the College's Non-Consensual Sexual Intercourse Policy. Kevin should have known that John was incapable of making a rational, reasonable decision about sexual activity. Even if John seemed to consent, Kevin was well aware that John had consumed a large amount of alcohol, that he seemed physically ill, and that he appeared to pass out during sex.

v. Sexual Exploitation

Sexual Exploitation occurs when a person takes non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual misconduct under this policy. Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism (such as watching a person undressing, using the bathroom or engaging in sexual acts without the consent of the person being observed).
- Invasion of sexual privacy.
- Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of revenge pornography.
- Prostitution of another.
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the infection.

- Administering alcohol or drugs (such as “date rape” drugs) to another person without their knowledge or consent (assuming the act is not completed).
- Exposing one’s genitals in non-consensual circumstances, including unwelcome sexting (but not including streaking, which may be deemed as disruptive conduct under the Student Code of Conduct).

vi. Other Civil Rights Offenses

In addition to the forms of sexual misconduct described above, the following types of conduct are also prohibited as forms of discrimination when the specific act is based upon the reporting party’s actual or perceived membership in a protected class.

- Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
- Discrimination, defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities;
- Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
- Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the College community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy, which can be found in the Student Handbook at <https://www.marietta.edu/community-standards>);
- Bullying, defined as
 - Repeated and/or severe
 - Aggressive behavior
 - Likely to intimidate or intentionally hurt, control, or diminish another person, physically or mentally
 - That is not speech or conduct otherwise protected by the 1st Amendment.
- Intimate Partner Violence (commonly referred to as dating, domestic, or relationship violence), defined as verbal, physical, or emotional violence or abuse between those who are involved in, or have been involved in, an intimate interaction or relationship.
 - Examples:
 - A boyfriend shoves his girlfriend into a wall upon seeing her talking to a male friend.
 - An ex threatens to out her former girlfriend as a lesbian if she doesn’t give the relationship another chance.

- A graduate student consistently gaslights³ their trans partner for things that the graduate student is insecure about themselves.
- Married employees are witnessed in the parking garage, with one partner slapping and scratching the other in the midst of an argument.

vii. Stalking

Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for their own safety or the safety of others; or
- Suffer substantial emotional distress.

For the purposes of this definition:

- Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.
- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

Examples of Stalking

- Students A and B were friends with benefits. Student A wanted a relationship, which caused student B to break it off. Student A could not let go, and pursued student B relentlessly. Student B obtained a campus no-contact order. Subsequently, Student B discovered his social media accounts were being accessed and things were being posted, snapped, and messaged as if they were from him, but they were not. Whoever accessed his account posted a picture of a penis, making it look as if he had sent out a picture of himself, though it was not his penis. This caused him considerable embarrassment and social anxiety. He changed his passwords, only to have it happen again. Seeking help from the Title IX Coordinator, Student B met with the IT department, which discovered an app on his phone and a keystroke recorder on his laptop, both of which were being used to transmit his data

³ The term *gaslight* refers to psychologically manipulating another individual which results in them doubting their memory, their perception(s), and/or questioning their sanity.

to a third party.

- A graduate student working as an on-campus tutor received flowers and gifts delivered to their office. After learning the gifts were from a student they recently tutored, the graduate student thanked the student and stated that it was not necessary and would appreciate if the gift deliveries stop. The student then started leaving notes of love and gratitude on the tutor's car, both on-campus and at home. Asked again to stop, the student stated by email: "You can ask me to stop, but I'm not giving up. We are meant to be together, and I'll do anything to make you have the feelings for me that I have for you." When the tutor did not respond, the student emailed again, "You cannot escape me. I will track you to the ends of the earth. If I can't have you, no one will."

- viii.** Violation of any other College policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory effect on employment or educational access, benefits, or opportunities.

Sanctions for the above-listed Civil Rights Offenses range from reprimand through expulsion (students) or termination of employment. If the alleged offenses are not gender-based, they will be addressed through the appropriate policies and procedures, based on the responding party's status as a student, a staff member, or a member of the faculty.

4. Retaliation

Retaliation is defined as any materially adverse action taken *because of* a person's participation in a protected activity. Protected activity includes reporting an incident that may implicate this policy, participating in the resolution process, supporting a reporting or responding party, or assisting in providing information relevant to an investigation.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. Marietta College is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

Examples of Retaliation:

- Student-athlete A alleges sexual harassment by a coach; the coach subsequently cuts the student-athlete's playing time in half without a legitimate justification.
- A faculty member alleges gender inequity in pay within her department; the Department Chair then revokes his approval for her to attend a national conference, citing the faculty member's tendency to "ruffle feathers."
- A student from Organization A participates in a sexual misconduct investigation as a witness whose testimony is damaging to the responding party, who is also a

member of Organization A; the student is subsequently removed as a member of Organization A because of their participation in the investigation.

5. Confidentiality and Reporting of Offenses Under This Policy

All College employees are expected to report actual or suspected discrimination or harassment to appropriate officials immediately, though there are some limited exceptions. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected discrimination or harassment. They may offer options and resources without any obligation to inform an outside agency or campus official unless a reporting party has requested this information be shared. If a reporting party expects formal action on their allegations, reporting to any employee can connect them with resources to report crimes and policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the reporter), who will take action when an incident is reported to them. The following describes the reporting options at Marietta College:

a. Confidential Reporting

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

- On-campus licensed professional counselors
- On-campus health service providers and staff
- On-campus athletic trainers, if the reporting party has a patient-provider relationship with the athletic trainer, the reporting party shares information with the athletic trainer in confidence, and the information bears on the reporting party's treatment by the athletic trainer.
- Off-campus (non-employees of Marietta College):
 - Licensed professional counselors and other medical providers
 - Local rape crisis counselors
 - Domestic violence resources
 - Local or state assistance agencies
 - Clergy/Chaplains
 - Attorneys

All of the above-listed individuals will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor. Campus counselors and the Employee Assistance Program are available to help free of charge and may be consulted on an emergency basis during normal business hours. College employees listed above will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client or patient.

b. Formal Reporting Options

All College employees have a duty to report harassment or discrimination of which they become aware, unless they fall under the “Confidential Reporting” section above. Employees must promptly share all details of the reports they receive.

Reporting parties may want to carefully consider whether they share personally identifiable details with non-confidential employees, as those details must be shared with the Title IX Coordinator. *Generally, climate surveys, classroom writing assignments or discussions, human subjects research, or events such as “Take Back the Night” marches or speak-outs do not provide notice that must be reported to the Coordinator by employees, unless the reporting party clearly indicates that they wish a report to be made.* Support measures may result from such disclosures without formal institutional action.

When a Reporting Party Does Not Wish to Proceed

If a reporting party does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with federal law.

The Title IX Coordinator has ultimate discretion over whether the College proceeds when the reporting party does not wish to do so. Note that the College’s ability to remedy and respond to a reported incident may be limited if the reporting party does not want the College to proceed with an investigation and/or the resolution process. The goal is to provide the reporting party with as much control over the process as possible, while respecting the College’s obligation to protect its community.

In situations involving pattern, predation, threat, minors, weapons, and/or violence, or when the allegations involve serious or pattern misconduct, the College may be unable to fully honor a request for confidentiality and/or informal resolution.

In cases in which the reporting party requests confidentiality and the circumstances allow the College to honor that request, the College will offer interim supports and remedies to the reporting party and the community, but will not otherwise pursue formal action. If the reporting party elects to take no action, they can change that decision later if they decide to pursue a formal process at a later date. With formal reports, a reporting party has the right, and can expect, to have allegations taken seriously by Marietta College, and to have the incidents investigated and properly resolved through these procedures.

Failure of a Mandated Reporter to Report

Failure of a non-confidential employee, as described in this section, to report an incident of gender-based harassment or discrimination of which they become aware is a violation of College policy and can be subject to disciplinary action for failure to comply.

Privacy and Sharing on a Need-to-Know Basis

Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told, including but not limited to: Human Resources, Division of Student Life, College Police, and the CARE Team.

Information will be shared as necessary with investigators, Hearing Panel members, witnesses, and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party's rights and privacy. Additionally, anonymous reports can be made by reporting parties and/or third parties using the online reporting form posted at

https://cm.maxient.com/reportingform.php?MariettaCollege&layout_id=2. Note that these anonymous reports may prompt a need for the College to investigate.

6. Federal Timely Warning Obligations

Parties reporting sexual misconduct, intimate partner violence, and/or stalking should be aware that under the Clery Act, the College must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community. The College will ensure that a reporting party's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

7. False Allegations and Information

Deliberately false and/or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action.

Additionally, witnesses and parties providing knowingly false evidence or deliberately misleading an official conducting an investigation will be subject to discipline under College policy.

8. Amnesty for Reporting Party and Witnesses

The Marietta College community encourages the reporting of misconduct and crimes by reporting parties and witnesses. Sometimes, reporting parties or witnesses are hesitant to report to College officials or participate in resolution processes because they fear that they

themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident.

It is in the best interests of the College community that reporting parties choose to report to College officials, and that witnesses come forward to share what they know. To encourage reporting, Marietta College maintains a policy of offering reporting parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs - related to the incident. Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution.

Students: Sometimes students are hesitant to assist others for fear that they may get in trouble themselves (for example, an underage student who has been drinking might hesitate to help take an individual who has experienced sexual misconduct to the Campus Police). The College maintains a policy of amnesty for students who offer help to others in need.

Employees: Employees may be hesitant to report harassment or discrimination they have experienced for fear that they may get in trouble themselves. For example, an employee who has violated the consensual relationship policy and is then assaulted in the course of that relationship might hesitate to report the incident to College officials. The College may, at its discretion, offer employee reporting parties amnesty from such policy violations related to the incident (typically more minor policy violations). Amnesty may also be granted to witnesses on a case-by-case basis.

9. Parental Notification (allegations involving students)

The College reserves the right to notify parents/guardians of dependent students regarding any serious health or safety risk, and/or any significant change in student status or student conduct situation, particularly in terms of alcohol and other drug violations. The College may also notify parents/guardians of non-dependent students who are under age 21 of any alcohol and/or drug policy violations, and/or to inform them of situations in which there is a significant and articulable health and/or safety risk. The College will base its decision on whether to notify any student's parents/guardians based on what it deems to be in the best interest of the student's safety and wellbeing given the totality of the circumstances.

The College also reserves the right to designate which College officials have a need to know about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

10. Federal Statistical Reporting Obligations

Certain campus officials – those deemed Campus Security Authorities (CSAs) - have a duty to report the following for federal statistical reporting purposes (Clery Act):

- a) All “primary crimes,” which include all criminal homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;

- b) Hate crimes, which include any bias motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- c) VAWA⁴-based crimes, which include sexual assault, domestic violence, dating violence, and stalking; and
- d) Arrests and referrals for disciplinary action for weapons-related law violations, liquor related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be passed along to College Police regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log. This reporting helps to provide the community with a clear picture of the extent and nature of campus crime to ensure greater community safety.

Campus Security Authorities include: student life staff, student conduct staff, College Police, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

The information to be shared includes the date, the general location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the reporting party and may be done anonymously.

⁴ VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.

RESOLUTION PROCESS FOR ALLEGATIONS OF GENDER-BASED HARASSMENT, DISCRIMINATION, AND MISCONDUCT

Marietta College will act on any formal or informal allegation/notice of violation of the Policy on Gender-Based Harassment, Discrimination, and Misconduct (“the Policy”) that is received by the Title IX Coordinator or any faculty, staff, or other employee, with the exception of confidential resources, as articulated in the Policy.

The procedures below apply to all allegations of harassment or discrimination on the basis of gender or sex that are reported to have taken place in a context over which Marietta College has jurisdiction (see **Jurisdiction of the College** further above on page 6) involving students, student organizations, faculty, administrators, staff, guests, visitors, contractors, vendors, invitees, campers, or any other individual who falls under the College’s jurisdiction as defined in this Policy.

These procedures may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g. vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures elaborated in the student, faculty, and employee handbooks.

These procedures, like the Policy, are global in scope. While they are informed by various laws (such as Titles VI, VII, and IX, as well as state law) and can be used to satisfy these laws, the procedures stand alone as the College’s resolution mechanism for the conduct covered by the Policy, whether state or federal law applies or not. Law sets the floor for these procedures, but the College has determined the resolution mechanisms that are best suited to its community.

Overview

Upon receipt of an allegation or notice to the Title IX Coordinator of an alleged violation of the Policy, Marietta College initiates this resolution process, which involves a prompt preliminary inquiry to determine if there is reasonable cause to believe the nondiscrimination policy has been violated.

If so, the College will initiate one of three responses: a remedial response because the reporting party does not want to proceed formally; an informal resolution; or a formal resolution, including an investigation and an opportunity for a hearing. A formal resolution is thorough, reliable, impartial, prompt, fair, and as private as possible.

The investigation and resolution process determine whether the Policy has been violated. If so, the College will promptly implement effective remedies designed to end the discrimination, prevent its recurrence, and address its effects.

1. Resolution Process

If at any point in the Resolution Process the evidence indicates that an incident does not rise to the level of gender-based harassment, discrimination, and/or misconduct but could be in violation of other College policies, the Title IX Coordinator may refer the matter to the appropriate office (e.g., Student Conduct, Human Resources) for further investigation and resolution.

Roles of Resolution Pool Members

The resolution process relies on a pool of officials (“the Pool”) to carry out the process. Members of the Pool are announced in an annual distribution of this policy to campus, prospective students, their parents, and prospective employees. The list of Pool members and a description of the Pool can be found at on the Title IX page of the College’s website (<https://www.marietta.edu/title-ix>). Members of the Pool are trained annually in all aspects of the resolution process, and can serve in any of the following roles, at the direction of the Title IX Coordinator:

- To act as advisors to the reporting or responding party(ies)
- To serve as a Hearing Panel Chair
- To serve on a Hearing Panel to determine findings of (non-)responsibility and/or sanctions
- To serve on an Appeal Panel to assess any possible procedural error in an earlier hearing, review any new evidence, and/or evaluate the appropriateness of any sanction(s) imposed from the earlier hearing

Appointment of Pool Members

The President, in consultation with the Title IX Coordinator, appoints the Pool, which acts with independence and impartiality. While members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different cases, the College can also designate permanent roles for individuals in the Pool, using others as substitutes or to provide greater depth of experience when necessary. This process of assignment of roles may be the result of particular skills, aptitudes, or talents identified in members of the Pool that make them best suited to particular roles.

Training of Pool Members

The Pool members receive annual training. This training includes, but is not limited to: the College's policy and procedures on Gender-Based Harassment, Discrimination, and Misconduct; implicit bias; disparate treatment and impact; reporting, confidentiality, and privacy requirements; applicable laws, regulations, and federal regulatory guidance; how to implement appropriate and situation-specific remedies; how to investigate in a thorough, reliable, and impartial manner; how to uphold fairness, equity, and due process; how evidence is weighed; how to conduct questioning; how to assess credibility; impartiality and objectivity; how to render findings and generate clear, concise, evidence-based rationales; and how to determine appropriate sanctions in reference to all forms of harassment and discrimination allegations. Specific training is also provided for appeals officers, intake personnel, advisors, and chairs. All Pool members are required to attend annual ongoing training.

The Pool includes

- 2 Co-Chairs (one from HR and one from Student Life), each of whom serves as the *ex officio* (non-voting) Hearing Administrator during Hearing Panels, for allegations involving student responding parties and employee responding parties, respectively
- 2 members from Academic Affairs (faculty and/or staff)
- 2 members from Student Life
- 2 members from Athletics
- 2 members from other administrative divisions

Pool members are preferably appointed to three-year terms. No member of the Pool may be a practicing attorney.

2. Reporting Misconduct

Any member of the College community (i.e., student, faculty, staff, volunteer), guest, or visitor who believes that the Policy on Discriminatory Harassment and Other Discriminatory Misconduct has been violated should contact the Title IX Coordinator and/or one of the Deputy Title IX Coordinators. If the conduct is criminal in nature, any member of the community, including guests and visitors, may contact the Marietta College Police Department and/or local police to make a report. It is also possible for employees to notify a supervisor, or for students to notify a College employee. These individuals will notify the Title IX Coordinator. The College website also includes a reporting form at https://cm.maxient.com/reportingform.php?MariettaCollege&layout_id=2, which may be used to initiate the resolution process.

All employees (except those whom the College has designated as confidential) who receive notice of a potential violation of the College's Policy on Gender-Based Harassment, Discrimination, and Misconduct are expected to promptly contact the Title IX Coordinator upon becoming aware of a report or incident. Specific information on any allegations received by any party will be reported to the Title IX Coordinator, and every effort will be made to maintain the privacy of those initiating a report.

In all cases, Marietta College will consider the reporting party's wishes regarding how the reported misconduct is pursued, but reserves the right to investigate and pursue a resolution even when a reporting party chooses not to initiate or participate in the resolution process when doing so is necessary to protect the community.

3. Interim Actions and Responsive Measures

Marietta College will offer and implement appropriate and reasonable responsive, supportive, and/or protective measures to reporting and responding parties upon notice of alleged harassment, discrimination, and/or retaliation.

These interim actions are intended to support both the reporting and responding parties; protect and preserve access to educational and employment programs and activity; address the short-term effects of harassment, discrimination, and/or retaliation; protect the safety of all parties; and prevent further violations.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other health services
- Referral to the Employee Assistance Program
- Visa and immigration assistance
- Student financial aid counseling
- Education to the community or community subgroup
- Altering campus housing situation
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus escorts
- Providing transportation accommodations
- Implementing contact limitations (no contact orders) between the parties
- Academic support
- Offering adjustments to academic deadlines, course schedules, etc.

At the time that interim measures are offered, the College will inform the reporting party, in writing, that they may file a formal report with the College either at that time or in the

future.

The College will maintain as confidential the supportive or protective measures, provided that confidentiality does not impair the College's ability to provide the supportive or protective measures. Reasonable measures taken will be at no cost to the parties. The College will use the least restrictive means possible when determining appropriate interim actions to ensure the continued safety and health of the reporting and responding parties and/or the College's community and to ensure as minimal an academic impact on the reporting and responding parties as possible. The College will implement measures that do not unreasonably burden the other party and will regularly re-evaluate the actions to determine the necessity of their continued implementation.

The College may interim suspend a student or student organization, or place an employee on paid or unpaid administrative leave, pending the completion of investigation and resolution procedures when, in the judgment of the Title IX Coordinator or designee, the safety or well-being of any member(s) of the College's community may be jeopardized by the on-campus presence/ongoing activity of the responding party. The College may implement such measures if, after engaging in an individualized analysis, the College determines that the immediate threat to any member(s) of the College's community justifies removal of the individual. These interim measures can also be taken with regard to contractors, vendors, guests, visitors, or any other individual who is a responding party in an allegation of a violation of this Policy.

In all cases in which an interim action/suspension is imposed, the responding party, or two (2) representatives from the group when a student organization is the responding party, will be given the option to meet with the Title IX Coordinator or designee prior to such action/suspension being imposed, or as soon thereafter as reasonably possible, to show cause why the action/suspension should not be implemented or should be modified. This meeting is not a hearing on the merits of the allegation(s), rather an administrative process intended to determine solely whether the interim action/suspension is appropriate. The Title IX Coordinator or designee has sole discretion to implement or stay an interim action/suspension and to determine conditions and duration. Violation of an interim action under this policy will be grounds for discipline, which may include expulsion (student), or termination (employee), or standing order of no contact and no trespass (responding party who is not a student or employee) . During an interim action/suspension, the responding party may be denied access to any or all of the following: College housing, campus, facilities, events.

With regard to students and employees, the College will implement the least restrictive interim actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator or designee, these measures may include restrictions from

classes and/or all other institutional activities or privileges for which a student or employee might otherwise be eligible. For example, such measures could include, but are not limited to: removing a student from a residence hall, temporarily re-assigning an employee, restricting a student's or employee's access to or use of institutional facilities or equipment, allowing a student to withdraw or take incompletes without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student organizational leadership, or intercollegiate athletics.

At the discretion of the Title IX Coordinator or designee, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the reporting and responding parties.

4. Preliminary Inquiry

Following receipt of notice or an alleged violation of the College's harassment or non-discrimination policies, the Title IX Coordinator or designee⁵ engages in a preliminary inquiry to determine if there is reasonable cause to believe the nondiscrimination policy has been violated. The preliminary inquiry is typically 1-5 business days in duration.

This inquiry may also help the Title IX Coordinator or designee determine if the allegations involve violence, threat, pattern, predation, minors, and/or the use of a weapon, in the event that the reporting party has asked for no action to be taken.

In any situation in which violence, threat, pattern, predation, minors, and/or the use of a weapon is **not** evidenced, the Title IX Coordinator or designee may respect a reporting party's request not to pursue the matter through the formal resolution process and will investigate informally only so far as necessary to determine appropriate remedies or refer the matter for alternate resolution options.⁶

If the Title IX Coordinator or designee determines that Title IX is not applicable to the allegations of harassment, discrimination, and/or misconduct, the matter will be referred to the appropriate administrative unit for resolution.

Compelling Formal Proceedings

The College reserves the right to initiate formal resolution proceedings without a report or participation by the reporting party when deemed necessary by the Title IX Coordinator, usually to protect the community in situations that evidence a compelling safety risk. When

⁵ If circumstances require, the President or Title IX Coordinator may designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

⁶ Marietta College reserves the right to proceed in spite of the reporting party's wishes based on the totality of the evidence.

the College has actual knowledge of reports by multiple individuals regarding misconduct by the same responding party, the Title IX Coordinator or designee will initiate formal proceedings pursuant to this section, regardless of the participation level of one or more of the reporting parties.

When the College proceeds, the reporting party (or their advisor) may have as much or as little involvement in the process as they wish. The reporting party retains all rights of a reporting party under this process irrespective of their level of participation. When the reporting party chooses not to participate, they may select an advisor to serve as proxy throughout the process, acting to ensure and protect the rights of the reporting party. When the Title IX Coordinator or designee believes it is necessary to move the process forward but also knows that credibility will be a key consideration in the formal process, the Coordinator or designee must balance the institutional need to move forward without the involvement of the reporting party against the rights of the responding party, who is entitled to a fair process in accordance with these procedures.

When the reporting party wishes to proceed or the College determines it will proceed, and the preliminary inquiry shows that reasonable cause exists, the Title IX Coordinator or designee will direct that the allegation be resolved through one of the following processes, discussed briefly here and in greater detail below:

- Informal Resolution – typically used for less serious offenses and only when the reporting and responding parties agree to informal resolution or the responding party is willing to accept responsibility for a violation. A preliminary inquiry will still typically precede this step.
- Formal Resolution – investigation and a hearing before a neutral and impartial Hearing Panel, subject to appeal (as described below) and final determination. Remedies to restore those impacted will be implemented upon a finding of policy violation.

Discretion to Terminate the Process at Any Time

The process followed considers the preferences of the parties, but is ultimately determined by the Title IX Coordinator. If, during the preliminary inquiry or at any point during the formal investigation, the Title IX Coordinator determines that reasonable cause does not support the conclusion that the Policy has been violated, the process will end and the parties will be notified.

The reporting party may request that the Title IX Coordinator review the reasonable cause determination and/or re-open the investigation. This decision lies within the sole discretion of the Title IX Coordinator, but the request is usually only granted in extraordinary

circumstances. Other appeal options do not apply.

5. Cross-claims

The College permits the filing of cross-claims but uses the preliminary inquiry, described above, to assess whether the allegations are made in good faith. Cross-claims by the responding party may be made in good faith, but are, on occasion, also made for purposes of retaliation. The College is obligated to ensure that the resolution process is not abused for retaliatory purposes.

Cross-claims determined to have been reported in good faith will be processed using the resolution procedures below. Investigation of such claims may take place after resolution of the underlying allegation, in which case a delay may occur. Cross-claims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When cross-claims are not made in good faith, they will be considered retaliatory, and may constitute a violation of this Policy.

6. Advisors

Reporting and responding parties may have an advisor of their choice present with them for all meetings and interviews within the resolution process, if they so choose. The parties may select whomever they wish to serve as their advisor as long as the advisor is eligible and available. While it is not advisable to choose as an advisor someone who is also a witness in the process, should a party decide to do so, the potential for bias and conflict-of-interest of the witness can and will be explored by the Hearing Panel.

The advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise and consult with them throughout the resolution process. The parties may choose advisors from inside or outside the College community. The Title IX Coordinator will also offer to assign a trained Pool member to serve as an advisor for any party if the party so chooses. The parties may choose their advisor from the Pool, a non-trained advisor from outside the Pool, or proceed without an advisor.

The parties may be accompanied by their advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help their advisees prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

The College cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney, but the other party does not, or cannot afford an attorney, the College is not obligated to provide an attorney. If a hearing proceeding takes place and the party has not previously been accompanied by an advisor, the party will select an advisor from the College's trained Pool. A College-trained advisor is a process advisor who is

trained on the institutional process. The advisor provided by the College is not an advocate or attorney and is not able to provide the same kinds of advice that an advocate or attorney is trained to provide, but will act in the best interests of their advisee.

Reporting parties may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>)
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association.]

Responding parties may wish to contact organizations such as:

- FACE (<http://www.facecampusequality.org>)
- SAVE (<http://www.saveservices.org>).

All advisors are subject to the same campus rules, whether they are attorneys or not. Advisors may not address campus officials in a meeting or interview unless invited to. The advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the investigators or other decision-makers except during a hearing proceeding, as described below.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation. While the advisor generally may not speak on behalf of their advisee, the advisor may consult with their advisee, either privately as needed, or quietly by passing notes during any resolution process meeting or interview, as long as they do not disrupt the process. For longer or more involved discussions, the parties and their advisors should ask for breaks to step out of meetings to allow for private consultation.

Advisors may be given an opportunity to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows advisors to clarify any questions they may have, and allows the College an opportunity to clarify the role the advisor is expected to take.

Advisors are expected to refrain from interference with the College's investigation and resolution. Any advisor who steps out of their role will be warned once and only once. If the advisor continues to disrupt or otherwise fails to respect the limits of the advisor role, the advisor will be asked to leave the meeting. When an advisor is removed from a meeting, that meeting will typically continue without the advisor present. Subsequently, the Title IX Coordinator or designee will determine whether the advisor may be reinstated or replaced by a different advisor.

The College expects that the parties may wish to have the College share documentation and evidentiary information related to the allegations with their advisors. Parties may

share this information directly with their advisor, or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process. The College also provides a consent form that authorizes the College to share such information directly with the advisor. The parties must either complete this form or provide similar documentation consenting to a release of information to the advisor before Marietta College is able to share records with an advisor. If a party requests that all communication be made through their attorney advisor, the College will comply with that request.

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the College. The College may seek to restrict the role of any advisor who does not respect the sensitive nature of the process or who fails to abide by the College's privacy expectations.

The College expects an advisor to adjust their schedule to allow them to attend College meetings when planned. The College does not typically change scheduled meetings to accommodate an advisor's inability to attend. The College will, however, make reasonable provisions to allow an advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

A party may elect to change advisors during the process, and is not obligated to use the same advisor throughout. The parties are expected to inform the investigator of the identity of their advisor at least one (1) day before the date of their first meeting with the investigator (or as soon as possible if a more expeditious meeting is necessary or desired). The parties are expected to provide timely notice to the investigator if they change advisors at any time.

7. Resolution Processes

Proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with College policy. While there is an expectation of privacy around what is discussed during interviews, the parties have discretion to share their own experiences with others if they so choose. Marietta College encourages parties to discuss this with their advisors before doing so.

a. Informal Resolution

Informal Resolution is used when the parties agree to resolve the matter through conflict resolution, when the responding party accepts responsibility for violating policy, or when the Title IX Coordinator or designee can resolve the matter informally by providing remedies to resolve the situation. It is not necessary to pursue Informal Resolution first in order to pursue Formal Resolution, and any party participating in Informal Resolution can stop the process at any time and request the Formal Resolution process.

Prior to implementing Informal Resolution, the College will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the College. The College will obtain voluntary, written confirmation that the reporting and responding parties wish to resolve the matter through Informal Resolution.

i. Conflict Resolution

Conflict Resolution is an informal process, such as mediation or restorative practices, by which a mutually-agreed upon resolution of an allegation is reached. It may be used for less serious, yet inappropriate conduct and is encouraged as an alternative to the Formal Resolution process to resolve conflicts. The parties must consent to the use of Conflict Resolution.

Additionally, the Title IX Coordinator determines if Conflict Resolution is appropriate based on the willingness of the parties, the nature of the conduct at issue, and the amenableness of the conduct to Conflict Resolution. In a Conflict Resolution meeting, a trained administrator or third-party facilitates a dialogue with the parties to an effective resolution, if possible. Sanctions are not possible as the result of a Conflict Resolution process, though the parties may agree to appropriate remedies.

The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the accord may result in appropriate responsive/disciplinary actions.

Conflict Resolution is not the primary resolution mechanism used to address reports of violent conduct of any kind or in other cases of serious violations of the Policy, though it may be made available after the Formal Process is completed, should the parties and the Title IX Coordinator believe that it could be beneficial. Conflict Resolution is not used as a stand-alone resolution in cases of sexual violence.

ii. Responding Party Admits Responsibility For Alleged Violations

The responding party may admit responsibility for all or part of the alleged policy violations at any point during the resolution process. If the responding party admits responsibility for all alleged misconduct, the matter is referred to a Decision-Maker

(an individual selected from the Pool) who renders the determination that the responding party is in violation of the College's Policy and determines appropriate sanctions and/or responsive actions in coordination with other appropriate administrator(s).

The appropriate sanction or responsive actions are promptly implemented in order to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the reporting party and the community.

If the responding party only admits to part of the alleged policy violations, then the Decision-Maker finds the responding party in violation for the admitted violations, and the contested allegations will be resolved using Formal Resolution. Any applicable sanctions will be issued upon completion of the Formal Resolution process.

iii. Negotiated Resolution

The Title IX Coordinator or designee, with the consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and the College.

b. Formal Resolution: Step 1 – Investigation

Formal Resolution can be pursued for any conduct for which the responding party has not accepted responsibility that constitutes conduct covered by the Policy at any time during the process. Formal Resolution starts with a formal investigation.

Notice

If Formal Resolution is initiated, the Title IX Coordinator or designee will provide written notification of the investigation to the responding party upon commencement of the formal process. This facilitates the responding party's ability to prepare for the interview and to identify and choose an advisor to accompany them.

Notification will include a summary of the allegations, including (if known) the identity of the parties involved, the precise misconduct being alleged, the date and location of the alleged incident(s), the specific policies implicated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result. Notification will also include a statement that the College presumes the responding

party is not responsible for the reported misconduct unless and until the evidence supports a different determination; that determinations of responsibility are made at the conclusion of the process; that the reporting and responding parties may request to inspect and review evidence obtained; and, that the College's policy/code of conduct/etc., that prohibits knowingly making false statements, including knowingly submitting false information during the resolution process.

Updates on this notice may be made as the investigation progresses and more information is available.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent addresses of the parties as indicated in official College records, or emailed to the parties' College-issued email accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The reporting party is typically copied on such correspondence – if copied, an indication of that will be included on the correspondence to the responding party.

Resolution Timeline

The College will make a good faith effort to complete the resolution process within sixty to ninety (60-90) business days, including appeals, which can be extended as necessary for appropriate cause by the Title IX Coordinator or designee, with notice to the parties as appropriate.

Appointment of an Investigator

Once the decision is made to commence a formal investigation (as part of a formal resolution process), the Title IX Coordinator or designee will contract an independent trained and certified investigator to conduct a formal investigation into the alleged violation(s) of the College's Policy on Gender-Based Harassment, Discrimination, and Misconduct, usually within three (3) business days of determining that a formal investigation should proceed.

Ensuring Impartiality

Any individual materially involved in the administration of the resolution process (including the Title IX Coordinator, investigators, or decision-maker(s)) may neither have nor demonstrate a conflict of interest or bias for either reporting or responding parties generally, or for a specific reporting or responding party.

The Title IX Coordinator or designee will vet the contracted investigator to ensure impartiality by ensuring that there are no actual or apparent conflicts of interest or bias. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator or designee will determine whether the concern is reasonable and supportable. If so, another investigator will be contracted and the impact of the bias or conflict, if any, will be remedied.

The resolution process involves an objective evaluation of all relevant evidence obtained, both that which supports that the responding party engaged in a policy violation and that which supports that the responding party did not engage in a policy violation. Credibility determinations may not be based, in any way, on an individual's status as a reporting party, responding party, or witness.

Until the responding party is determined to be responsible by a preponderance of the evidence for a policy violation, the College operates under the presumption that the responding party is not responsible for the reported misconduct. However, the College reserves the right to institute interim measures if it deems that those are necessary.

Investigation Timeline

Investigations are completed expeditiously, normally within ten (10) business days, though some investigations take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc. The College will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

Delays in the Process and Interactions with Law Enforcement

The College may undertake a short delay in its investigation (several days to weeks) if circumstances require. Such circumstances include, but are not limited to, concurrent law enforcement activity, the need for language assistance, the absence of parties and/or witnesses, and/or accommodation for disabilities or health conditions. The College will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. The College will promptly resume its investigation and resolution process as soon as feasible. During such a delay, Marietta College will implement interim actions as deemed appropriate.

Actions by the College are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal

charges have been dismissed or reduced.

Steps in the Investigation

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to fully review and respond to all evidence, on the record.

The investigator typically takes the following steps, if not completed already (not necessarily in order):

- Determines the identity and contact information of the reporting party.
- In coordination with campus partners (e.g. the Title IX Coordinator), initiates or assists with any necessary interim actions or remedial measures.
- Identifies all policies implicated by the alleged misconduct and notifies the reporting and responding parties of the specific policies implicated.
- Assists the Title IX Coordinator with conducting a prompt preliminary inquiry to determine if there is reasonable cause to believe the responding party has violated policy.
 - If there is insufficient evidence to support reasonable cause, the inquiry is closed with no further action.
 - If there is sufficient evidence, the formal investigation begins.
- Commences a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the responding party.
- Meets with the reporting party to finalize their interview/statement, if necessary.
- Prepares the initial notice of investigation (NOI) on the basis of the preliminary inquiry. Notice of allegations may be combined with the NOI or provided subsequently. Notice should inform the parties of their right to have the assistance of a Pool member or other advisor of their choosing present for all meetings attended by the party.
- When formal notice of allegations is communicated, provides the parties with a written description of the alleged violation(s), including the parties involved, the date and location of the reported misconduct, a list of all policies allegedly

violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.

- If and when additional/material alterations to allegations arise, communicates this promptly to the parties. This notice will provide the parties with a summary of the additions to/alterations of the allegations, as well as any changes to the policies implicated.
- Provides the parties and witnesses an opportunity to review and verify the investigator's summary notes from their respective interviews and meetings.
- Makes good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible.
- When participation of a party is expected, provides that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose. Investigators and/or the Title IX Coordinator will provide advanced notice of such meetings, with rare exception.
- Interviews all available relevant witnesses and conduct follow-up interviews as necessary.
- Allows each party the opportunity to suggest witnesses and questions they wish the investigators to ask of the other party and witnesses.
- Completes the investigation promptly and without unreasonable deviation from the intended timeline.
- Provides regular status updates to the parties throughout the investigation.
- Prior to the conclusion of the investigation, provides the parties and their respective advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding.
- Writes a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence, copies of which are to be included in an appendix to the report. The report will include a thorough assessment of the consistency in and credibility of facts reported by all parties and witnesses and provide a recommendation based on all of the relevant information obtained. The investigator will use the preponderance of the evidence standard to recommend whether the evidence supports a finding that College policies have been violated. They will also provide a detailed rationale for their recommendations.
- Prior to the conclusion of the investigation, provides the parties and their respective advisors (if so desired by the parties) a copy of the draft investigation report, including all analysis, assessments of consistency in and credibility of reported facts, and recommendations.
- Provides the parties with an equal opportunity to inspect and review the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the College does not

intend to rely in reaching a responsibility determination, so that each party may meaningfully respond to the evidence prior to the conclusion of the investigation.

- Provides each party with a full and fair opportunity (no fewer than 10 days) to respond to the investigation report in writing.
- May choose to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses.
- Incorporates relevant elements of the parties' written responses into the final investigation report, make any changes needed, and finalize the report. The final report is then shared with all parties.
- The responding party, if deemed by the investigator to likely have been in violation, is given an opportunity to accept the findings of the investigation and waive a hearing.
 - If the responding party accepts responsibility for all alleged misconduct and waives a hearing, the investigator will submit the final investigation report, complete with all relevant evidence; the parties' submitted responses; and any subsequent material, documentation, communication, etc.; to the Decision-Maker, chosen from the Pool, who has had no prior involvement in the process.
 - The Decision-Maker will review all of the material, render a determination of responsibility, and determine appropriate sanctions in coordination with other relevant administrators, if applicable.
- If either party rejects the recommended findings, in whole or in part, the investigator(s) will refer any contested allegations for a hearing.
- The Title IX Coordinator or designee will provide the Hearing Panel with a copy of the final investigation report, complete with all relevant evidence, the parties' submitted responses, and any relevant subsequent materials, documentation, communications, etc.
- Any information related to credibility assessments, policy analysis, recommended findings, or responses to recommended findings by the investigator(s) will be fully redacted by the Title IX Coordinator or designee before the report is shared with the Hearing Panel. Any such details are inadmissible in the hearing and/or appeal stages of the process.

Role and Participation of Witnesses

Witnesses (as distinguished from the parties) who are faculty, students, or staff of the College are expected to cooperate with and participate in the College's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution

process constitutes a violation of policy and may warrant discipline.

While in-person interviews for both parties and all potential witnesses are ideal, circumstances (e.g. study abroad, summer break) may require individuals to be interviewed remotely. Skype™, Zoom™, FaceTime™, WebEx™, or similar technologies may be used for interviews if investigators determine that timeliness or efficiency dictate a need for remote interviewing. Witnesses may also provide written statements in lieu of interviews, if deemed appropriate by the investigators, though not preferred.

Recording of Interviews

No unauthorized audio or video recording of any kind is permitted during investigation meetings. The investigator will audio and/or video record interviews.

Evidentiary Considerations in the Investigation

Unless the Title IX Coordinator determines it is appropriate, the investigation and the finding of responsibility does not consider: (1) incidents not directly related to the possible violation, unless they evidence a pattern, (2) the sexual history of the parties (though there may be a limited exception made in regard to the sexual history between the parties or when evidence regarding the reporting party's sexual history is offered to prove that someone other than the responding party engaged in the reported misconduct), or (3) the character of the parties.

Admission of Violation

The responding party may admit responsibility for all or part of the alleged policy violations at any point during the resolution process. If the responding party admits responsibility for all of the alleged misconduct, the matter is directly referred to a Decision-Maker chosen from the Pool, who will make a determination that the individual is in violation of the College's Policy and determine appropriate sanctions and/or responsive actions, in consultation with appropriate College administrators. These sanction(s) and/or responsive actions are promptly implemented in order to effectively to stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the reporting party and the community.

Referral for Hearing

Provided that the contested allegations are not resolved through Informal Resolution, the Title IX Coordinator or designee will refer the matter for a hearing within ten (10) days of

the conclusion of the formal investigation, barring unusual circumstances.

c. Formal Resolution: Step 2 – Hearing Panel

NOTE: *Process may divert directly to a Decision-Maker at this point if all parties opt to waive a hearing after reviewing the investigator's report and recommendations.*

The Title IX Coordinator or designee will refer the findings of the investigation to the appropriate Pool Co-Chair, depending on whether the responding party is an employee or a student. Allegations involving student employees will be directed to the appropriate Co-Chair depending on the context of the alleged misconduct.

In consultation with the Title IX Coordinator or designee, the Hearing Panel Chair will appoint three members from the available Pool to the Hearing Panel. Members of the Hearing Panel will not have had previous involvement with the allegation. An alternate may sit in throughout the process if needed or at the discretion of the Chair.

Those who are serving as advisors for either party may not serve as a Hearing Panel member/Decision-Maker in that same matter. The Title IX Coordinator or designee may not serve as a voting Hearing Panel member/Decision-Maker in that matter. The hearing will convene at a time determined by the Hearing Panel Chair.

Evidentiary Considerations

Any evidence that the Hearing Panel believes is relevant and credible may be considered, including an individual's prior misconduct history, as well as evidence indicating a pattern of misconduct. When prior misconduct is related to the current allegations, the prior misconduct may be considered at the findings stage of the process; unrelated prior misconduct (e.g., alcohol abuse) will only be considered during sanctioning. The Hearing Panel may exclude irrelevant or immaterial evidence and may choose to disregard evidence lacking in credibility or that is improperly prejudicial.

While previous conduct violations by the responding party are not generally admissible as information supporting the current allegation, the investigator may supply the Hearing Panel/Decision-Maker with information about previous good faith allegations and/or findings, when that information suggests potential pattern and/or predatory conduct.

Previous disciplinary action of any kind involving the responding party may be considered in determining the appropriate sanction, because the College uses a progressive discipline system.

The Hearing Panel/Decision-Maker renders a determination based on the preponderance of the evidence, i.e., whether it is more likely than not that the responding party violated policy.

If all parties opt to waive the hearing, the Title IX Coordinator or designee will refer the matter to the Decision-Maker. More information about the hearing waiver option is provided further below in subsection iv.

i. Notice of Hearing

10-14 days prior to the hearing, or as far in advance as is reasonably possible if an accelerated hearing is scheduled with the consent of the parties, the Hearing Panel Chair will send a letter of notice to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The letter will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities. If any party does not appear at the scheduled hearing, the hearing will be held in their absence. For compelling reasons, the Chair may reschedule the hearing.
- Notification that the parties may have the assistance of an advisor of their choosing at the hearing (see section on “Advisors” above).

Hearings for possible violations that occur near or after the end of an academic term and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the College and remain within the sixty (60) day goal for resolution.

ii. Pre-Hearing

The Chair, after consultation with the parties as necessary, will provide the names of witnesses who will be participating in the hearing, all pertinent⁷ documentary evidence, and the investigation report between the parties at least ten (10) days

⁷ ATIXA would prefer this be “relevant” instead of “pertinent,” but §106.45(b)(3)(viii) of the proposed regulations note that parties must review both relevant and irrelevant evidence as part of the investigation and prior to the hearing.

prior to the hearing. Any witness scheduled to participate in the hearing must have been interviewed first by investigators or have provided a written statement, unless all parties consent to the witness' participation in the hearing.

The parties will be given a list of the names of all Hearing Panel members at least ten (10) days in advance of the hearing. All objections to any panelist must be raised in writing and submitted to the Title IX Coordinator or designee as soon as possible. Hearing panel members will only be removed if the Title IX Coordinator or designee concludes that their bias or conflict of interest precludes an impartial hearing of the allegation.

The Hearing Panelists will be given a list of the names of all parties and witnesses at least seven (7) days in advance of the hearing. Any Panelist who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties and all witnesses in advance of the hearing. If a Panelist is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator or designee as soon as possible.

The Hearing Panel Chair, in consultation with the parties and investigators, may decide in advance of the hearing that certain witnesses do not need to be physically present if their testimony can be adequately summarized by the investigator(s) in the investigation report or during the hearing. Otherwise, all parties will have the opportunity to present witnesses at the hearing, to present facts and arguments in full, and to question witnesses and party(ies) during the hearing. Procedures below describe the questioning mechanisms permitted.

Alternative Hearing Options

If a party or parties prefer not to attend the hearing in person, the parties should request alternative arrangements from the Hearing Panel Chair as soon as possible or at least three business (3) days prior to the hearing. The Chair can arrange to use technology to allow remote testimony without compromising the fairness of the hearing.

iii. Hearing Procedures

Hearings will usually be convened 14-21 days from the completion of the investigation and will be conducted in private. The Hearing Panel has the authority to hear all allegations of discrimination, harassment, and retaliation and may also hear any additional alleged policy violations that have occurred in concert with the

discrimination, harassment or retaliation, even though those collateral allegations may not specifically fall within the policy on Equal Opportunity, Harassment, and Nondiscrimination.

Participants will include the non-voting Chair, the three (3) members of the Hearing Panel, the investigator who conducted the investigation, the reporting and responding parties (or three (3) organizational representatives when an organization is the responding party), advisors to the parties, and any called witnesses. Marietta College reserves the right to have the College's legal counsel available to the Hearing Panel Chair during these proceedings.

Investigator Presents the Report

The Hearing Panel Chair explains the procedures and introduces the participants.

The investigator will then present the redacted report of the investigation and will be subject to questioning by the parties and the Hearing Panel. The investigator will be present during the entire hearing process, but not during deliberations. The investigator's analysis and/or recommendation(s) are not admissible at the hearing. The investigators, advisors, and parties will refrain from discussion of the investigation's recommended findings, analysis, or assessments of the consistency in and credibility of reported facts. If such information is introduced, the Chair will direct the Hearing Panel to disregard it. Once the investigator has presented their report and has been questioned, the parties may provide relevant information in turn, and the Chair will permit the parties to question both one another and any other witnesses. Throughout the entirety of the hearing, all questions from either party will be submitted first to the Chair, who will determine whether each question is relevant and/or appropriate before communicating said question for response or providing it to the Hearing Panel so that they can pose the question for response.

Participation in a Panel Hearing

The reporting and responding parties have the right to be present at the hearing. If, despite being notified of the date, time, and location of the hearing, any party is not in attendance, the hearing may proceed as described below. Neither party is required to participate in the hearing in order for the hearing to proceed. The investigator will be present, unless the Chair permits an absence under extenuating circumstances.

Questioning

As noted above, the parties are able to submit questions of the other party(ies), witnesses, and the investigator to the Hearing Panel Chair. Questions may be submitted in advance of the hearing in writing, or live or during the hearing proceeding itself. The Hearing Panel may also pose their own questions during the hearing. Parties and/or advisors may not pose live questions directly during the hearing. The Chair has absolute discretion to determine which questions are relevant and/or appropriate and may decline to pose or permit certain questions.

The rationale for rejecting any questions submitted in writing by the parties and/or *not* posing live questions during the hearing itself will be explained in writing to the party who submitted the question(s) within two (2) days of the conclusion of the hearing proceedings. The Chair may also direct that certain live questions, once posed, are not appropriate and should not be answered. In such instances, the Chair will provide the questioning party with a rationale for exclusion of the specific question(s). The Chair is responsible for ensuring that neither abusive nor inappropriate questioning occurs.

The Chair may consult with legal counsel, when needed, to help assess the appropriateness of specific questions. If any party or advisor is disrespectful of or disruptive to the proceedings, the Chair will take whatever actions they deem necessary to impose appropriate decorum.

Evidence Presented at the Hearing

Formal rules of evidence do not apply. Any evidence that the panel believes is relevant and credible may be considered, including an individual's prior misconduct history as well as evidence indicating a pattern of misconduct. The Chair is responsible for addressing any evidentiary concerns prior to and/or during the hearing, may exclude irrelevant or immaterial evidence, and may ask the Hearing Panel to disregard evidence lacking in credibility or that is improperly prejudicial. The Chair will determine all questions of procedure and evidence. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

Unless the Chair determines it is appropriate, no one will present information or raise questions concerning: (1) incidents not directly related to the possible violation, unless they evidence a pattern, (2) the sexual history of the parties (though there may be a limited exception with respect to pattern, the sexual history between the parties, or where evidence regarding the reporting party's sexual history is offered to prove that someone other than the responding party engaged in the reported misconduct), if relevant, (3) or the character of the parties. While

previous conduct violations by the responding party are not generally admissible as information about the present allegation, the investigators may supply the Hearing Panel with information about previous findings to consider as possible evidence of pattern and/or predatory conduct.

There will be no observers in the hearing unless an exception is granted by the Chair. The Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Hearing Panel or the parties involved, and then be excused.

In hearings involving more than one responding party or in which two (2) or more reporting parties have accused the same individual of substantially similar conduct, the standard procedure will be to hear the allegations jointly; however, the Title IX Coordinator or designee may permit the investigation and/or hearings pertinent to each responding party to be conducted separately, if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each responding party.

Hearings (except for deliberations) are recorded for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted. Hearing Panelists, the parties, their advisors, and appropriate administrative officers of the College will be allowed to listen to the recording in a controlled environment determined by the Title IX Coordinator or designee. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

Deliberation and Decision-Making

The three (3) members of the Hearing Panel and the non-voting Chair will deliberate in closed session to determine whether the responding party is responsible or not responsible for the policy violation(s) in question. The Hearing Panel will base the determination(s) on a preponderance of the evidence (i.e., whether it is more likely than not that the responding party committed each alleged violation). A majority vote of the Hearing Panel is required to determine the finding.

When there is a finding of responsibility on one or more of the allegations, the parties will then be invited to submit a statement to the Hearing Panel for consideration in determining an appropriate sanction(s). The reporting party may submit a written statement describing the impact of the conduct and expressing a preference about the sanction(s) to be imposed. The Hearing Panel may – at their discretion – consider the reporting party’s preference, but it is not binding.

The responding party may submit a written statement explaining any factors that they believe should mitigate or otherwise be considered in determining the sanction(s) imposed. The Chair will ensure that each of the parties has an opportunity to review any statement submitted by the other party(ies).

The Hearing Panel will review the impact statements and will impose the appropriate sanction(s). The Chair, in collaboration with the Hearing Panel, will then prepare a written deliberation report and deliver it to the Title IX Coordinator or designee, detailing the finding, the information used in support of its recommendation, and any information the Hearing Panel excluded from its consideration and why. The report should conclude with any sanctions. This report typically should not exceed three (3) pages in length and must be submitted to the Title IX Coordinator or designee within two (2) days of the end of deliberations, unless the Title IX Coordinator or designee grants an extension. If an extension is granted, the Title IX Coordinator or designee will notify the parties.

Using the deliberation report, the Title IX Coordinator or designee will prepare a letter of outcome and will share the letter, including the final determination and applicable sanction(s), within three (3) days of receiving the Hearing Panel's deliberation report. The letter of outcome will be shared with the parties without significant time delay between notifications. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official College records, or emailed to the parties' College-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

The letter of outcome will identify the specific policy(ies) reported to have been violated, including the relevant policy section and will contain a description of the procedural steps taken by the College from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties, and witnesses, site visits, methods used to obtain evidence, and hearings held. The letter will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the College is permitted to share such information under state or federal law; any sanctions issued which the College is permitted to share according to state or federal law; and any remedies provided to the reporting party designed to ensure access to the College's educational or employment program or activity, to the extent the College is permitted to share such information under state or federal law. The notification will also include information on when the results are considered by the College to be final, any changes that occur prior to

finalization, and the relevant procedures and bases for any appeals options that are available.

Parties Waived Hearing

In an instance in which a responding party has acknowledged responsibility and the parties have agreed to forego a hearing, the Decision-Maker to whom the matter has been assigned will follow the same steps outlined above for deliberations by the Hearing Panel. Namely, the parties will be asked to submit any statements they wish to make regarding sanctioning. The Decision-Maker will then review those statements and prepare a written report to present to the Title IX Coordinator or designee detailing the finding of responsibility and providing recommended sanction(s). This report typically should not exceed three (3) pages in length and should be submitted to the Title IX Coordinator or designee within ten (10) days after the Decision-Maker has been appointed to handle this matter, unless the Title IX Coordinator or designee grants an extension. If an extension is granted, the Title IX Coordinator or designee will notify the parties.

Using the Decision-Maker's report, the Title IX Coordinator or designee will prepare a letter of outcome and will share the letter, including the applicable sanction(s), within three (3) days of receiving the Decision-Maker's report. The letter of outcome will be shared with the parties without significant time delay between notifications. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official College records, or emailed to the parties' College-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

The letter of outcome will identify the specific policy(ies) reported to have been violated, including the relevant policy section and will contain a description of the procedural steps taken by the College from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties, and witnesses, site visits, methods used to obtain evidence, and hearings held. The letter will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the College is permitted to share such information under state or federal law; any sanctions issued which the College is permitted to share according to state or federal law; and any remedies provided to the reporting party designed to ensure access to the College's educational or employment program or activity, to the extent the College is permitted to share such information under state or federal law. The notification will also include information on when

the results are considered by the College to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any appeals options that are available.

iv. Sanctions

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation
- The responding party's disciplinary history
- Previous allegations or allegations involving similar conduct
- Any other information deemed relevant by the Hearing Panel
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the reporting party and the community
- The impact on the parties

The sanctions will be implemented as soon as is feasible. The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by outside authorities.

Examples of Student Sanctions

The following are the usual sanctions that may be imposed upon students or organizations singly or in combination:

- *Warning:* A formal statement that the conduct was unacceptable and a warning that further violation of any College policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling:* A mandate to meet with and engage in either College-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation:* A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may

- include denial of specified social privileges, exclusion from co-curricular activities, no-contact orders, and/or other measures deemed appropriate.
- *Suspension*: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at College.
- *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend College-sponsored events. This sanction will be noted permanently as a Conduct Expulsion on the student's record, subject to any applicable expungement policies.
- *Withholding Diploma*: The College may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree*: The College reserves the right to revoke a degree previously awarded from the College for fraud, misrepresentation, or other violation of institutional policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Organizational Sanctions*: Deactivation, loss of recognition, loss of some or all privileges (including College registration) for a specified period of time.
- *Other Actions*: In addition to or in place of the above sanctions, the College may assign any other sanctions as deemed appropriate.

Examples of Employee Sanctions

Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:

- *Warning – Verbal or Written*
- *Performance Improvement/Management Process*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Loss of Annual Pay Increase*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions*: In addition to or in place of the above sanctions, the College may

assign any other sanctions as deemed appropriate.

Sanctions for non-students or non-employees of Marietta College (e.g., contractors, vendors, visitors, guests, volunteers, etc.) will vary, depending on the totality of circumstances of the allegations. Such sanctions may include a permanent order of no trespass on Marietta College property, including Marietta College-owned/-controlled means of electronic communication.

d. Withdrawal or Resignation While the Formal Resolution Process Is Pending

There may be an instance in which a student who is the responding party in a formal resolution process decides to withdraw from the College while resolution is still pending. If a student who is the responding party decides not to participate in the formal resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student responding party permanently withdraw from the College, the resolution process ends, as the College no longer has disciplinary jurisdiction over the withdrawn student. However, the College will continue to address and remedy any systemic issues, variables that have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination. The student who withdraws or leaves while the process is pending may not return to the College. A hold will be placed on their ability to be readmitted. If the student only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process will continue and that student is not permitted to return to Marietta College unless and until all sanctions have been satisfied. During the resolution process, the College may put a hold on a responding student's transcript or place a note on a responding student's record indicating that a disciplinary matter is pending.

Employees: Should an employee who is a responding party resign with unresolved allegations pending, the resolution process ends, as the College no longer has disciplinary jurisdiction over the resigned employee. However, the College will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination. The employee who is a responding party and resigns with unresolved allegations pending is not eligible for rehire with the College, and the records retained by the Title IX Coordinator and Human Resources will reflect that status.

Third Parties: If the responding party is neither a student nor an employee of Marietta College, and if they decide not to participate in the formal resolution process, the process proceeds to a reasonable resolution, absent their participation. In such instances, the College reserves the right to impose an order of no trespass and/or no contact, or to

continue any such existing order(s), until final resolution is reached.

e. Appeals

All requests for appeal consideration must be submitted in writing to the Title IX Coordinator within three (3) business days of delivery of the written letter of outcome to the parties. Any party may appeal the findings and/or sanctions, but appeals are limited to the grounds laid out below:

1. Established administrative procedures were not followed that would have a **significant impact** on the outcome of the hearing.
2. New evidence that was not available or could not have been discovered through diligent investigation before or during the hearing that merits or warrants reevaluation of the case and that would have a **significant impact** on the outcome of the hearing.
3. The sanction/s imposed was/were **clearly disproportionate** to the violations found. This criterion is only to be considered in cases where the sanction is suspension or expulsion (student) or termination (employee).

A three-member Appeals Panel chosen from the Pool will be designated by the Title IX Coordinator or designee. The Appeals Panel will be chaired by the appropriate *ex-officio* (non-voting) Co-Chair of the Pool. If at all possible, no voting Appeal Panelists will have been involved in this matter previously. The Appeals Panel will review the appeal request(s). The original finding and sanction/responsive actions will stand if the appeal is not timely or is not based on the grounds listed above, and such a decision is final. The party requesting appeal must show that one or more of the appeal grounds has been met, and the other party or parties may, but is/are not obligated to, show that the grounds have not been met. The original finding and sanction are presumed to have been decided reasonably and appropriately.

When any party requests an appeal, the Title IX Coordinator or designee will share the appeal request with the other party(ies), who may file a response within three (3) days of receiving a copy of the appeal, and/or bring their own appeal on separate grounds within the original appeal timeframe. If new grounds are raised, the original appealing party will be permitted to submit a written response to these new grounds within three (3) days. Any response or appeal request will be shared with each party.

When the Appeals Panel finds that at least one of the grounds is met by at least one party, additional principles governing the hearing of appeals will include the following:

- Decisions by the Appeals Panel are to be deferential to the original decision, making changes to the finding only when there is clear error, and to the sanction/responsive action only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (*de novo*) of the

allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the grounds for appeal. An appeal is not an opportunity for Appeals Panelists to substitute their judgment for that of the original Hearing Panel/Decision-Maker merely because they disagree with the finding(s) and/or sanction(s).

- The Appeals Panel may consult with the Chair on questions of procedure or rationale for clarification, if needed.
- Appeals granted based on new evidence should normally be remanded to the original investigator and/or Hearing Panel/Decision-Maker for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator/designee or, in limited circumstances, heard by the three-member Appeals Panel.
- Sanctions imposed as the result of the formal or informal resolution processes are implemented immediately unless the Title IX Coordinator or designee stays their implementation in extraordinary circumstances pending the outcome of the appeal.
 - For students: Graduation, study abroad, internships/ externships, etc., do NOT in and of themselves constitute extraordinary circumstances, and students may not be able to participate in those activities during their appeal.
- The Title IX Coordinator or designee will confer with the Appeals Panel, incorporate the results of any remanded grounds, and render a written decision on the appeal to all parties within three (3) days from the hearing of the appeal or remand. The letter of outcome for the appeal will be shared with the parties without significant time delay between notifications. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' College-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.
- The letter of outcome for the appeal will specify the finding on each alleged policy violation, any sanctions that may result which the College is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the College is permitted to share under state or federal law. The letter will also include information that this is a final result.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).
- In rare cases where a procedural or substantive error cannot be cured by the original Hearing Panel/Decision-Maker (as in cases of bias), the Appeals Panel may recommend a new hearing/decision with a new Hearing Panel/Decision-Maker. The results of a remand to a Hearing Panel/Decision-Maker cannot be appealed. The

results of a new hearing/decision can be appealed, once, on any of the three available appeal grounds.

- In cases where the appeal results in reinstatement to the College or resumption of privileges, all reasonable attempts will be made to restore the responding party to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

f. Long-Term Remedies/Actions

Following the conclusion of the resolution process and in addition to any sanctions implemented, the Title IX Coordinator or designee may implement long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the harassment or discrimination, remedy its effects, and prevent its reoccurrence. These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the individual and/or the community
- Permanent alteration of housing arrangements
- Permanent alteration of work arrangements for employees
- Provision of campus escorts
- Climate surveys
- Policy modification
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator or designee, long-term support or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedial requirements owed by the College to the responding party.

The College will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair the College's ability to provide these services.

g. Failure to Complete Sanctions/Comply with Interim and Long-term Remedies/Responsive Actions

All responding parties are expected to comply with the assigned sanctions, responsive actions, and corrective actions within the timeframe specified by the Title IX Coordinator.

Failure to abide by the sanctions/actions imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanctions/ actions, including suspension, expulsion, and/or termination from the College and may be noted on a student's official transcript. A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

9. Records

In implementing this policy, records of all allegations, investigations, formal and informal resolutions, and hearings will be kept indefinitely by the Title IX Coordinator in the Title IX database.

10. Statement of the Rights of the Parties

- The right to an equitable investigation and resolution of all credible allegations of prohibited harassment or discrimination made in good faith to College officials;
- The right to timely written notice of all alleged violations, including the identity of the parties involved, the precise misconduct being alleged, the date and location of the alleged misconduct, the implicated policies and procedures, and possible sanctions;
- The right to timely written notice of any material adjustments to the allegations (e.g. additional incidents or allegations, additional reporting parties, unsubstantiated allegations) and any attendant adjustments needed to clarify potential policy violations implicated.
- The right to be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible;
- The right to not have any personally identifiable information released to the public, without consent provided, except to the extent permitted by law;
- The right to be treated with respect by College officials;
- The right to have College policies and procedures followed without material deviation;
- The right to not be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence;
- The right to not be discouraged by College officials from reporting sexual misconduct or discrimination to both on-campus and off-campus authorities;

- The right to be informed by College officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by College authorities in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report, as well;
- The right to have allegations of violations of this Policy responded to promptly and with sensitivity by College law enforcement and/or other College officials;
- The right to be informed of available interim actions, such as counseling; advocacy; health care; legal, student financial aid, visa, and immigration assistance; or other student services, both on campus and in the community;
- The right to an College-implemented no-contact order (or a no-trespass order against a non-affiliated third party) when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct that presents a danger to the welfare of the party or others;
- The right to be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of discrimination, harassment, and/or retaliation, if such changes are reasonably available. No formal report, or investigation, either campus or criminal, need occur before this option is available. Such actions may include, but are not limited to:
 - Changing an on-campus student's housing to a different on-campus location
 - Assistance from College staff in completing the relocation
 - Changing an employee's work environment (e.g. reporting structure, office relocation)
 - Transportation accommodations
 - Visa/immigration assistance
 - Arranging to dissolve a housing contract and a pro-rated refund
 - Exam, paper, and/or assignment rescheduling or adjustment
 - Taking an incomplete in, or a withdrawal from, a class (may be retroactive)
 - Transferring class sections
 - Temporary withdrawal/leave of absence (may be retroactive)
 - Campus safety escorts
 - Alternative course completion options
- The right to have the College maintain such actions for as long as necessary and for protective measures to remain private, provided privacy does not impair the College's ability to provide the accommodations or protective measures;
- The right to be fully informed of relevant College policies and procedures as well as the nature and extent of all alleged violations;

- The right to receive a detailed notice of investigation, once the College has decided to pursue a formal investigation, which contains the identity of the parties involved, the date and location of the alleged incident, the specific misconduct alleged, and the policies implicated by the alleged misconduct;
- The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible;
- The right to ask the investigator and Hearing Panel members to identify and question relevant witnesses, including expert witnesses;
- The right to provide the investigator and Hearing Panel members with a list of questions that, if deemed relevant and appropriate by the Hearing Panel Chair, may be asked of any party or witness;
- The right to not have irrelevant prior sexual history or character admitted as evidence;
- The right to know the relevant evidence obtained, and to respond to that evidence on the record;
- A fair opportunity for the parties to provide the investigator with their account and have that account be on the record.
- The right to receive a copy of the investigation report, including all factual, policy, and/or credibility analyses performed, and all relevant evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law, prior to the hearing, and the right to have at least 10 days to review the report prior to the hearing;
- The right to respond to the investigation report, including comments providing any additional relevant evidence after the opportunity to review the investigation report, and to have that response on the record;
- The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, where relevant;
- The right to regular updates on the status of the investigation and/or resolution;
- The right to have reports of alleged Policy violations addressed by investigators, Title IX Coordinators, Hearing Panel members who have received at least eight hours of relevant annual training;
- The right to a Hearing Panel that is not single-sex in its composition, if a panel is used;

- The right to preservation of privacy, to the extent possible and permitted by law;
- The right to meetings, interviews, and/or hearings that are closed to the public;
- The right to petition that any College representative in the process be recused on the basis of demonstrated bias and/or conflict of interest;
- The right to have an advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process;
- The right to the use of the preponderance of the evidence standard to make a finding after an objective evaluation of all relevant evidence;
- The right to be present for all testimony given and evidence presented during any resolution-related hearing;
- The right to submit an impact statement in writing to the Hearing Panel following determination of responsibility, but prior to sanctioning;
- The right to be promptly informed in a written notice of outcome letter of the finding(s) and sanction(s) of the resolution process and a detailed rationale therefor (including an explanation of how credibility was assessed), delivered without undue delay between the notifications to the parties;
- The right to be informed in writing of when a decision by the College is considered final and any changes to the sanction that occur before the decision is finalized;
- The right to be informed of the opportunity to appeal the finding and sanction of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the College;
- The right to a fundamentally fair resolution process as defined in these procedures.

11. Disabilities Accommodation in the Equity Resolution Process

Marietta College is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the resolution process at the College. Anyone needing such accommodations or support should contact the Assistant Director of Disability Services if a student, or Human Resources if an employee, who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator or designee, determine which accommodations are appropriate and necessary for full participation in the process.

12. Revision

These policies and procedures supersede any previous policy(ies) addressing gender-based harassment, discrimination, and misconduct, and will be reviewed and updated annually by the Title IX Coordinator. The College reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect. **Any materially significant changes to these policies and procedures must be approved by Cabinet.**

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer and College break schedules.

The Title IX Coordinator may also vary procedures materially with notice (on the institutional web site, with appropriate date of effect identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure.

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

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

This policy and procedure was formally adopted on May 5, 2020.