

# **MARIETTA COLLEGE**

  

## **SEXUAL MISCONDUCT POLICY AND GRIEVANCE PROCEDURES**

*For questions concerning this document,  
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## **I. GENDER-BASED MISCONDUCT POLICY**

### **INTRODUCTION**

Members of the Marietta College community, guests, and visitors have the right to be free from sexual violence. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. When an allegation of misconduct is brought to an appropriate administrator's attention, and a Respondent is found to have violated this policy, serious sanctions will be used to reasonably ensure that such actions are never repeated. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This policy is intended to define community expectations and to establish a mechanism for determining when those expectations have been violated.

### **OVERVIEW OF POLICY EXPECTATIONS WITH RESPECT TO PHYSICAL SEXUAL MISCONDUCT**

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

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

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

## **SEXUAL VIOLENCE -- RISK REDUCTION TIPS**

Risk reduction tips can often take a victim-blaming tone, even unintentionally. With no intention to victim-blame, and with recognition that only those who commit sexual violence are responsible for those actions, these suggestions may nevertheless help you to reduce your risk of experiencing a non-consensual sexual act. Below, suggestions to avoid committing a non-consensual sexual act are also offered:

1. If you have limits, make them known as early as possible.
2. Tell a sexual aggressor “NO” clearly and firmly.
3. Try to remove yourself from the physical presence of a sexual aggressor.
4. Find someone nearby and ask for help.
5. Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
6. Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do.

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk of being accused of sexual misconduct:

1. Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
2. Understand and respect personal boundaries.
3. DON'T MAKE ASSUMPTIONS about consent; about someone's sexual availability; about whether they are attracted to you; about how far you can go or about whether they are physically and/or mentally able to consent. If there are any questions or ambiguity, then you DO NOT have consent.
4. Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. They may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which they are comfortable.
5. Don't take advantage of someone's drunkenness or drugged state, even if they did it to themselves.
6. Realize that your potential partner could be intimidated by you, or fearful. You may have a power advantage simply because of your gender or size. Don't abuse that power.
7. Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
8. Silence and passivity cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

**SEXUAL MISCONDUCT OFFENSES INCLUDE, BUT ARE NOT LIMITED TO:**

- 1. Sexual Harassment**
- 2. Non-Consensual Sexual Contact (or attempts to commit same)**
- 3. Non-Consensual Sexual Intercourse (or attempts to commit same)**
- 4. Sexual Exploitation**

**1. SEXUAL HARASSMENT**

Sexual Harassment is:

- unwelcome, gender-based verbal or physical conduct that is
- sufficiently severe, persistent or pervasive that it
- unreasonably interferes with, denies, or limits someone's ability to participate in or benefit from the College's educational programs, employment, and/or activities, and is
- based on power differentials (quid pro quo), the creation of a hostile environment, or retaliation.

Examples include: an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention; to punish a refusal to comply with a sexual based request; to condition a benefit on submitting to sexual advances; sexual violence; intimate partner violence; stalking; gender-based bullying.

**2. NON-CONSENSUAL SEXUAL CONTACT**

Non-Consensual Sexual Contact is:

- any intentional sexual touching,
- however slight,
- with any object,
- by a man or a woman upon a man or a woman,
- that is without consent and/or by force.

Sexual Contact includes:

- Intentional contact with the breasts, buttocks, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.

### 3. NON-CONSENSUAL SEXUAL INTERCOURSE

Non-Consensual Sexual Intercourse is:

- any sexual intercourse
- however slight,
- with any object,
- by a man or woman upon a man or a woman,
- that is without consent and/or by force.

Intercourse includes:

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

### 4. SEXUAL EXPLOITATION

Occurs when a student takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- invasion of sexual privacy;
- prostituting another student;
- non-consensual video or audio-taping of sexual activity;
- going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex);
- engaging in voyeurism;
- knowingly transmitting an STI or HIV to another student;
- exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals;
- sexually-based stalking and/or bullying may also be forms of sexual exploitation

#### ADDITIONAL APPLICABLE DEFINITIONS:

- **Consent:** Consent is clear, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity.
  - Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
  - Previous relationships or prior consent cannot imply consent to future sexual acts.
- **Force** is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that

overcome resistance or produce consent (“Have sex with me or I’ll hit you.” “Okay, don’t hit me, I’ll do what you want.”).

- Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, 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.
- NOTE: There is no requirement that a party resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.
- In order to give effective consent, one must be at least 18 years of age.
- Sexual activity with someone who one should know to be -- or based on the circumstances should reasonably have known to be -- mentally or physically incapacitated (by alcohol or other drug use, unconsciousness or blackout), constitutes a violation of this policy.
  - Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction).
  - This policy also covers a person whose incapacity results from a mental and/or a physical disability, sleep, involuntary physical restraint, or from the taking of rape drugs. Possession, use and/or distribution of any of these substances, including Rohypnol, Ketomine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another student is a violation of this policy. More information on these drugs can be found at <http://www.911rape.org/>
- Use of alcohol or other drugs will never function as a defense for any behavior that violates this policy.
- The sexual orientation and/or gender identity of individuals engaging in sexual activity is not relevant to allegations under this policy.

### **SANCTION STATEMENT**

- Any student found responsible for violating the policy on Non-Consensual or Forced Sexual Contact (where no intercourse has occurred) will likely receive a sanction ranging from probation to expulsion, depending on the severity of the incident, and taking into account any previous campus conduct code violations.\*
- Any student found responsible for violating the policy on Non-Consensual or Forced Sexual Intercourse will likely face a recommended sanction of suspension or expulsion.\*
- Any student found responsible for violating the policy on sexual exploitation or sexual harassment will likely receive a recommended sanction ranging from warning to expulsion,

depending on the severity of the incident, and taking into account any previous campus conduct code violations.\*

\*The Critical Issues Board reserves the right to broaden or lessen any range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior. Neither the initial hearing officers nor any appeals body or officer will deviate from the range of recommended sanctions unless justification exists to do so.

### **OTHER GENDER-BASED MISCONDUCT OFFENSES THAT FALL UNDER TITLE IX**

1. Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
2. Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of gender;
3. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
4. 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);
5. 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 1<sup>st</sup> Amendment).
6. Violence between those in an intimate relationship to each other;
7. Stalking, defined as repetitive and/or menacing pursuit, following, harassment and/or interference with the peace and/or safety of a member of the community; or the safety of any of the immediate family of members of the community.

### **CONFIDENTIALITY, PRIVACY AND REPORTING POLICY**

When consulting campus resources, all parties should be aware of confidentiality, privacy and mandatory reporting in order to make informed choices. On campus, some resources can offer you confidentiality, sharing options and advice without any obligation to tell anyone unless you want them to. Other resources are expressly there for you to report crimes and policy violations and they will take action when you report your victimization to them.

#### **To Report Confidentially**

If one desires that details of the incident be kept confidential, they should speak with on-campus mental health counselors, campus health service providers, or off-campus rape crisis resources who can maintain confidentiality. Campus counselors are available to help you free of charge and can be seen on an emergency basis. The Marietta College Sexual Assault Victims' Advocate is also available to speak with you at no cost and can be reached at (740) 434-3457.

In addition, you may speak on and off-campus with members of the clergy and chaplains, who will keep reports made to them confidential. For confidential off-campus assistance, you can also call EVE, a local agency that provides free services to survivors of domestic violence or sexual assault, at (740) 374-5820.

### **NON-CONFIDENTIAL REPORTING TO “RESPONSIBLE PERSONS”**

You are encouraged to speak to officials of the institution to make formal reports of incidents (deans, vice presidents, or other administrators with supervisory responsibilities, College police, and human resources). The College considers these people to be “responsible employees.” Notice to them is official notice to the institution. You have the right and can expect to have incidents of sexual misconduct to be taken seriously by the institution when formally reported, and to have those incidents investigated and properly resolved through administrative procedures. Formal reporting means that only people who need to know will be told, and information will be shared only as necessary with investigators, witnesses, and the accused individual.

### **REPORTING TO OTHER COLLEGE EMPLOYEES**

Please note that the College expects any employee with good reason to believe that a person has been sexually assaulted, has been subjected to severe or pervasive gender-based harassment, or has otherwise been discriminated against because of gender to report that belief to the employee’s supervisor or, in the case of a potential sexual assault, to Campus Police. Therefore, depending on what information is provided, reports to these College employees may not be confidential.

### **Federal Statistical Reporting Obligations**

Certain campus officials have a duty to report sexual misconduct for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the annual Campus Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include: student/conduct affairs, campus law enforcement, 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 location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.



## **Federal Timely Warning Reporting Obligations**

Victims of sexual misconduct should also be aware that College administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. The College will make every effort to ensure that a victim'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 danger. The reporters for timely warning purposes are exactly the same as detailed at the end of the above paragraph.

## **QUESTIONS AND ANSWERS**

Here are some of the most commonly asked questions regarding Marietta College's Sexual Misconduct Policy and Grievance Procedures.

- *Does information about a complaint remain private?*

The privacy of all parties to a complaint of sexual misconduct must be respected, except insofar as it interferes with the College's obligation to fully investigate allegations of sexual misconduct. Where privacy is not strictly kept, it will still be tightly controlled on a need-to-know basis. Dissemination of information and/or written materials to persons not involved in the complaint procedure is not permitted. Violations of the privacy of the Complainant (alleged victim) or the Respondent (accused individual) may lead to disciplinary action by the College.

In all complaints of sexual misconduct, all parties will be informed of the outcome. In some instances, the administration also may choose to make a brief public announcement of the nature of the violation and the action taken, without using the name or identifiable information of the Complainant. Certain College administrators are informed of the outcome within the bounds of student privacy (e.g., the President of the College, Dean of Students, Director of Security). If there is a report of an act of alleged sexual misconduct to a conduct officer of the College and there is evidence that a felony has occurred, College Police will be notified. This does not mean charges will be automatically filed or that a victim must speak with the police, but the institution is legally required to notify law enforcement authorities. The institution also must statistically report the occurrence on campus of major violent crimes, including certain sex offenses, in an annual report of campus crime statistics. This statistical report does not include personally identifiable information.

- *Will my parents be told?*

Whether you are the Complainant or the Respondent, the College's primary relationship is to the student and not to the parent. However, in the event of major medical, disciplinary, or academic jeopardy, students are strongly encouraged to inform their parents. College officials may directly inform parents:

- when requested to do so by a student;
- if a health or safety emergency involves the student;
- if the student, under the age of 21, has violated any law or policy concerning the use and/or possession of alcohol or a controlled substance;
- if the student is at risk of being removed from College housing or suspended or dismissed from the College;
- if the student has been found responsible for a serious violation of the Student Code of Conduct or College Housing Policies;
- if the Vice President for Student Life and/or Dean of Students deems there are special circumstances that are in the best interest of the student and College to notify the parent;
- if the student has signed the “Authorization to Release Academic/Conduct Information” form at registration which allows such communication;
- or in other situations as allowed by law.

- *Will the Respondent know my identity?*

Yes, if you want formal disciplinary action to be taken against the alleged Respondent. Sexual misconduct is a serious offense and the Respondent has the right to know the identity of the Complainant. If there is a hearing, the College does provide options for questioning without confrontation.

- *Do I have to name the perpetrator?*

Yes, if you want formal disciplinary action to be taken against the alleged Respondent. No, if you choose to respond informally and do not file a formal complaint (but you should consult the complete confidentiality policy above to better understand the College’s legal obligations depending on what information you share with different College officials). Complainants should be aware that not identifying the perpetrator may limit the institution’s ability to respond comprehensively.

- *What do I do if I am accused of sexual misconduct?*

DO NOT contact the Complainant. You may immediately want to contact a staff or faculty member of your choosing who can act as your advisor. You may also contact the Dean of Students Office, which can explain the College’s procedures for addressing sexual misconduct complaints. You may also want to talk to a confidential counselor at the counseling center or seek other community assistance.

- *Will I (as a victim) have to pay for counseling/or medical care?*

Not typically, if the institution provides these services already. If a Complainant is accessing community and non-institutional services, payment for these will be subject to state/local laws, insurance requirements, etc.

- *What about changing residence hall rooms?*

If you want to move, you may request a room change. Room changes under these circumstances are considered emergencies. It is typically institutional policy that in emergency room changes, the student is moved to the first available suitable room. If you want the accused individual to move, and believe that you have been the victim of sexual misconduct, you must be willing to pursue a formal College complaint. No contact orders can be imposed and room changes for the accused individual can be arranged. Other accommodations available to you might include:

- Assistance from College support staff in completing the relocation;
- Arranging to dissolve a housing contract and pro-rating a refund, if appropriate;
- Assistance with or rescheduling an academic assignment (paper, exams, etc.);
- Taking an incomplete in a class;
- Assistance with transferring class sections;
- Temporary withdrawal;
- Assistance with alternative course completion options;
- Other accommodations for safety as necessary.

- *What should I do about preserving evidence of a sexual assault?*

Police are in the best position to secure evidence of a crime. Physical evidence of a criminal sexual assault must be collected from the alleged victim's person within 120 hours, though evidence can often be obtained from towels, sheets, clothes, etc., for much longer periods of time. If you believe you have been a victim of a criminal sexual assault, you should contact either the College Police at campus extension 3333 or the Sexual Assault Victims' Advocate at (740) 434-3457 before washing yourself or your clothing. The Sexual Assault Victims' Advocate can accompany you to the hospital, and College Police can provide you with transportation. If a victim goes to the hospital, local police will be called, but s/he is not obligated to talk to the police or to pursue prosecution. Having the evidence collected in this manner will help to keep all options available to a victim, but will not obligate him or her to any course of action. Collecting evidence can assist the authorities in pursuing criminal charges, should the victim decide later to exercise it.

- *Will a victim be sanctioned when reporting a sexual misconduct policy violation if he/she has illegally used drugs or alcohol?*

No. The severity of the infraction will determine the nature of the College's response, but whenever possible the College will respond educationally rather than punitively to the illegal use of drugs and/or alcohol. The seriousness of sexual misconduct is a major concern, and the College does not want any of the circumstances (e.g., drug or alcohol use) to inhibit the reporting of sexual misconduct.

- *Will the use of drugs or alcohol affect the outcome of a sexual misconduct complaint?*

The use of alcohol and/or drugs by either party will not diminish the accused individual's responsibility. On the other hand, alcohol and/or drug use is likely to affect the Complainant's memory and, therefore, may affect the outcome of the complaint. A person bringing a complaint of sexual misconduct must either remember the alleged incident or have sufficient circumstantial evidence, physical evidence and/or witnesses to prove his/her complaint. If the Complainant does not remember the circumstances of the alleged incident, it may not be possible to impose sanctions on the Respondent without further corroborating information. Use of alcohol and/or other drugs will never excuse a violation by a Respondent.

- *What should I do if I am uncertain about what happened?*

If you believe that you have experienced sexual misconduct but are unsure of whether it was a violation of the institution's sexual misconduct policy, you should contact the institution's Sexual Assault Victims' Advocate at (740) 434-3457. The institution provides advisors who can help you to define and clarify the event(s) and advise you of your options.

## **Marietta College Sexual Misconduct Grievance and Investigation Process**

### **Where to Report:**

Students who wish to report a concern or complaint relating to discrimination or harassment may do so by reporting the concern to the College Title IX Coordinator: Victoria A. Ford, Marietta College, 215 Fifth Street, Marietta, OH 45750, telephone (740) 376-4725, or e-mail [fordv@marietta.edu](mailto:fordv@marietta.edu).

Individuals with complaints of this nature also always have the right to file a formal complaint with the United States Department Education:

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](mailto:OCR.Cleveland@ed.gov)

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

## **PREFACE:**

Marietta College's process for handling allegations of sexual misconduct involves an immediate initial investigation to determine if there is reasonable cause to believe the nondiscrimination policy has been violated. If so, the College will initiate a prompt, thorough and impartial investigation. This investigation is designed to provide a fair and reliable determination about whether the College nondiscrimination policy has been violated. If so, the College will implement a prompt and effective remedy designed to end the discrimination, prevent its recurrence and address its effects.

### ***Formal and Informal Grievance Procedure for Student Complaints***

This procedure is intended to apply to student grievances against employees, employee civil rights grievances against students, student-on-student civil rights grievances, student grievances against visitors or guests, and guest or visitor grievances against students. All other grievances by students against students or employees against students will be addressed through the student conduct procedures located elsewhere in this *Code*.

In the event that an employee is taking classes or should a student also be an employee (as in the case of work-study, a TA, an RA, etc.), procedures applicable to employee-on-employee grievances through the Department of Human Resources may also be applicable. It is the practice of this institution to bring employee and student grievance mechanisms together for joint resolution in such cases. Sanctions may result in an individual's capacity as a student, as an employee, or both.

### ***Informal Dispute Resolution Efforts: A Useful First Step before Filing Formal Complaints***

In cases other than sexual assault, before pursuing the formal complaint process, every reasonable effort should be made to constructively resolve issues with faculty, staff, or administrators, including following procedures for formal appeal. Whenever possible and safe, the problem or complaint should first be discussed with the individual involved in the complaint. If satisfactory resolution is not reached after discussion with the individual, the student should contact the individual's direct supervisor to attempt to resolve the complaint. If these efforts are unsuccessful, the formal complaint process may be initiated. The College does not require a student to contact the person involved or that person's supervisor if doing so is impracticable, or if the student is uncomfortable or believes that the conduct cannot be effectively addressed through informal means.

### ***Formal Grievance Process:***

## **1. INTRODUCTION**

Formal complaints of sexual misconduct by a student are made to the Title IX Coordinator, (740) 376-4725. When a complaint of sexual misconduct is filed with the Title IX Coordinator,

the Coordinator will designate two (2) Investigators to investigate the complaint. The Investigators will be selected from a pool of faculty and staff members who have received training on investigating alleged cases of sexual misconduct and Title IX.

## **2. FACT-FINDING INQUIRY**

Following receipt of a complaint, the Investigators will gather relevant evidence to determine whether sexual misconduct rules were violated. This inquiry should normally be completed within fourteen (14) calendar days. If the inquiry cannot be completed within that time, the Investigators will inform the Complainant and the Respondent.

The inquiry generally shall include interviews with the parties if available, interviews with other witnesses as needed, and a review of relevant documents (including social media) as appropriate. Disclosure of facts to parties and witnesses shall be limited to what is reasonably necessary to conduct a fair and thorough inquiry. The parties should aspire to protect the integrity of the inquiry and treat the matter with discretion and judgment. The inquiry process is not open to the public.

The student accused of sexual misconduct (the Respondent) will be notified in writing by the Investigators of the allegations and to explain the judicial procedures for allegations of sexual misconduct. The Respondent has the right to meet with the Investigators and tell his/her side of the story, to submit documents and other relevant evidence for consideration by the Investigators, to bring an advisor to the meeting with the Investigators, and to identify witnesses who may have information relevant to the complaint.

While the Investigator's inquiry is pending, the Complainant and the Respondent each have the right to know, upon request, the status of the inquiry.

At any time during the inquiry, the Investigators may recommend that interim protections or remedies for the Complainant be provided by appropriate College officials. These protections or remedies may include, but are not limited to, separating the parties, placing limitations on contact between the parties, or making alternative working or housing arrangements. Failure to comply with the terms of interim protections may be considered a separate violation of the Sexual Misconduct Policy.

## **3. DECISION BY THE INVESTIGATORS**

Upon completing the inquiry, the Investigators will make a determination as to whether the Respondent violated the sexual misconduct policy, and if so, what sanctions are applicable. The standard of proof the Investigators will use in making this determination is preponderance of evidence.

The Investigators may recommend to resolve the complaint in one of three ways: (1) a recommendation to dismiss the sexual misconduct allegations without sanctions; (2) a finding by the Investigators that the Respondent violated the sexual misconduct policy (and possibly other policies) and sanctions other than suspension or expulsion should be imposed (e.g. removal from College housing, probation, etc); (3) a finding by the Investigators that the Respondent violated the sexual misconduct policy (and possibly other policies) and suspension/expulsion should be imposed.

The findings will be presented to both the Complainant and the Respondent in the form of a letter. The Respondent and/or the Complainant have the choice to accept the findings of the Investigators, and the presented sanctions, if applicable, or they can reject the findings and presented sanctions. If the Respondent and/or the Complainant disagree with either the findings of the Investigators, or the proposed sanctions, if applicable, they must present to the Investigators, in writing within three (3) calendar days that they reject this finding and wish to have the case resolved by the Critical Issues Board. Upon receipt of this written request, the Investigators will compile all relevant materials related to the inquiry and provide them to the Dean of Students. The Dean of Students will conduct resolution of the complaint through the Critical Issues Board. If the Respondent and/or the Complainant accept the findings and any applicable sanctions, they will not be eligible to appeal the decision.

#### **4. DISMISSAL OF COMPLAINT**

If, after completing the inquiry, the Investigators determine that the preponderance of evidence does not show that the Respondent violated the sexual misconduct policy, they shall make the recommendation to dismiss the sexual misconduct allegations. If the Investigators recommend dismissal of the sexual misconduct allegations, but determine that the Respondent may have violated other, non-sexual misconduct policies, they shall refer the matter to the Dean of Students for further proceedings and possible sanctions imposed for the Student Code of Conduct violations.

The findings of fact shall be summarized in a letter to the Respondent with a note explaining that the Complainant has the opportunity to appeal the finding. The Investigators shall inform the Complainant in writing of the outcome of the inquiry. The Investigator's letter to the Complainant shall reference the judicial procedures for allegations of sexual misconduct and set a deadline of three (3) calendar days after the letter is sent for rejecting the Investigator's recommendation, and requesting a hearing before the Critical Issues Board. If the Complainant rejects the finding of non-responsibility, they must present to the Investigators, in writing, that they reject this finding and wish to have the case resolved by the Critical Issues Board. Upon receipt of this written request, the Investigators will compile all relevant materials related to the inquiry and provide it to the Dean of Students, at which point the case will be resolved by the Critical Issues Board.

If this deadline passes without a request for review, the decision to dismiss will become final. In this event, the Investigators shall inform the Respondent and the Complainant that the complaint is considered resolved.

If the case is to be dismissed, a copy of the report, with information related to third parties deleted, will be sent to the Complainant, the Respondent, and kept in the Title IX Coordinator's files.

## **5. FORMAL HEARING CHARGE PROCEDURE**

In those cases where the complaint is remanded to the Dean of Student, the Critical Issues Board (CIB) will resolve the complaint.

The Critical Issues Board is comprised of one staff member, one faculty member and one student. The Dean of Students or his/her designee is a permanent ex-officio member and serves as the CIB Administrator. The presiding officer shall be a faculty or staff member appointed by the members of the Board. Members serve a one-year term following their selection and ending on May 31<sup>st</sup> of the following year. The Faculty Council shall select faculty members. Other members shall be selected by the Dean of Students or his/her designee from a group of administrators, staff, and students who are trained in Marietta's disciplinary processes and Title IX.

Critical Issues Board Hearings are conducted according to the following guidelines:

1. Respondents shall be given notice of the pre-hearing date and the specific charges against them at least two (2) calendar days in advance.
2. Respondents shall be given notice of their formal hearing date at least five (5) calendar days in advance.
3. The Complainant and the Respondent shall be given the opportunity to view all documents prior to their hearing or as information is presented to the Board.
4. The Complainant and the Respondent shall have the right to review members of the pool for the Critical Issues Board. If there is a member of the pool they wish to eliminate for consideration as a member of the Board, they must present significant and pertinent information that supports the request.
5. Hearings shall be conducted in private.
6. The Complainant and the Respondent have the right to be assisted by an advisor. The advisor shall be a College faculty or staff member. Attorneys and parents/guardians of the Complainant and Respondent are not permitted to be present in hearings. The Complainant



and/or the Respondent is responsible for presenting his/her own case and, therefore, the advisor is not permitted to speak or participate directly in any hearings before the Board.

7. The Complainant and Respondent will be kept in separate rooms during the hearing.

8. Pertinent records, exhibits, written statements and witnesses may be accepted as evidence for consideration by the Board at the discretion of the Board Administrator.

9. The Board examines all witnesses and both the Complainant and Respondent may request the Board to ask certain questions, which the Board, in its discretion, may elect to do.

10. All procedural questions are subject to the final decision of the Administrator of the Board.

11. After the hearing the Board shall determine, by a preponderance of evidence and majority vote, whether the Respondent is responsible for each alleged violation of the Code.

12. A tape recording of the hearing will be made to ensure accuracy of all proceedings. The record shall be the property of the College and housed in the Office of the Dean of Students.

13. If the Respondent fails to appear for a scheduled hearing, evidence in support of the charges shall be presented and considered by the Board.

## **6. INTERIM DISCIPLINARY PROCEDURES**

In the event that the academic calendar prevents a timely hearing by the Critical Issues Board, the following procedure will be used. The investigation will occur and complaints will be resolved through the administrative hearing process which allows for the Dean of Students or his/her designee to hear and render a decision on the case. Appeals of decisions made by the Dean of Students in these situations are heard by the Vice President for Student Life, whose decision in the matter is final.

## **7. POST-HEARING APPEALS**

Appeals are permitted in all aspects of the student conduct system, and both the Complainant and the Respondent have the right to appeal a decision made by the Critical Issues Board.

Appeals of the Critical Issues Board are made to the Vice President for Student Life or his/her designee and are heard by the Discipline Appeals Board. Requests for appeals must be submitted by the Complainant or the Respondent in writing to the Vice President for Student Life or his/her designee within three (3) calendar days of the mailing of the letter notifying the Respondent and the Complainant of the findings and imposed sanctions. Failure to appeal within the allotted time will render the original finding and imposed sanctions final and conclusive.

### **Appeal Criteria:**

Appeals to the Vice President for Student Life must meet one of the following criteria:

- A. Established administrative procedures were not followed that would have a **significant** impact on the outcome of the hearing.
- B. 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.
- C. The sanction(s) imposed were **clearly disproportionate** to the violation found. This criterion is only to be considered in cases where the sanction is suspension or expulsion.

### **Discipline Appeals Board (DAB):**

The Discipline Appeals Board shall be composed of one faculty member, one staff member, and one student selected by the Dean of Students or his/her designee from a group of faculty, administrators, staff and students who are trained in Marietta's disciplinary procedures and Title IX. The Dean of Students or his/her designee is a permanent ex-officio member and serves as the DAB Administrator.

On appeal, the Discipline Appeals Board may:

- A. Affirm the finding and impose the sanctions of the Critical Issues Board.
- B. Remand the case to the presiding officer of the Critical Issues Board to reconsider the Board's finding or sanction, or conduct a new Critical Issues Board Hearing if one of the three appeal criteria is present.

If the case is remanded to the presiding officer of the Critical Issues Board, the Board will reconvene within three (3) business days to review the matter and then report its findings to the Vice President for Student Life who shall notify the Complainant or Respondent and appropriate College personnel by letter of the finding regarding the appeal.

An appeal of the decision of the Discipline Appeals Board following remand must be filed in writing within two (2) calendar days to the Vice President for Student Life. The appeal must cite one or more of the appeal criteria listed above. The decision of the Vice President for Student Life is final.

## **8. SANCTIONS**

Examples of sanctions for students found to be responsible for sexual misconduct include, but are not limited to: expulsion, suspension, interim suspension, loss of College housing, restrictions, loss of privileges, or restitution. Mediation (i.e., bringing the parties together) cannot be used as a remedy in cases of sexual misconduct.

## **9. REPORT**

An inquiry will result in a written report that, at a minimum, includes a statement of the allegations and issues, the positions of the parties, a summary of the evidence, findings of fact, and a determination by the Investigators as to whether College policy has been violated. The report may also recommend actions to resolve the complaint, including educational programs, remedies for the Complainant, and other sanctions as appropriate.

If a complaint is remanded to the Critical Issues Board, the case records will be maintained in the Office of Student Life.

### **STATEMENT OF THE RIGHTS OF THE COMPLAINANT**

- The right to investigation and appropriate resolution of all credible complaints of sexual misconduct made in good faith to College administrators;
- The right to be treated with respect by College officials;
- The right of both Complainant and Respondent to have the same opportunity to have others present (in support or advisory roles) during a campus disciplinary hearing;
- The right not to be discouraged by College officials from reporting an assault to both on-campus and off-campus authorities;
- The right to be informed of the outcome and sanction of any disciplinary hearing involving sexual assault, usually within 24 hours of the end of the conduct hearing;
- 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 campus authorities in notifying such authorities, if the student so chooses. This also includes the right not to report, if this is the victim's desire;
- The right to be notified of available counseling, mental health, or student services for victims of sexual assault, both on campus and in the community;
- The right to notification of, options for, and available assistance in, changing academic and living situations after an alleged sexual assault incident, if so requested by the victim and if such changes are reasonably available (no formal complaint or investigation, campus or criminal, need occur before this option is available). Accommodations may include:
  - Change of an on-campus student's housing to a different on-campus location;
  - Assistance from College support staff in completing the relocation;
  - Arranging to dissolve a housing contract and pro-rating a refund;
  - Exam (paper, assignment) rescheduling;

--Taking an incomplete in a class;  
--Transferring class sections;  
--Temporary withdrawal;  
--Alternative course completion options.

- The right not to have irrelevant prior sexual history admitted as evidence in a campus hearing;
- The right ***not*** to have any complaint of sexual assault mediated (as opposed to adjudicated);
- The right to make a victim-impact statement at the campus conduct proceeding and to have that statement considered by the board in determining its sanction;
- The right to a campus “no contact” order against another student who has engaged in or threatens to engage in stalking, threatening, harassing or other improper behavior that presents a danger to the welfare of the complaining student or others;
- The right to have complaints of sexual misconduct responded to quickly and with sensitivity by campus law enforcement.
- The right to appeal the finding and sanction of the conduct body, in accordance with the standards for appeal established by the institution;
- The right to review all documentary evidence available regarding the complaint, subject to the privacy limitations imposed by state and federal law, at least 48 hours prior to the hearing;
- The right to be informed of the names of all witnesses who will be called to give testimony, within 48 hours of the hearing, except in cases where a witness’ identity will not be revealed to the accused individual/Respondent for compelling safety reasons (this does not include the name of the alleged victim/Complainant, which will always be revealed);
- The right to preservation of privacy, to the extent possible and allowed by law;
- The right to a hearing closed to the public;
- The right to petition that any member of the conduct body be removed on the basis of demonstrated bias;
- The right to bring a victim advocate or advisor to all phases of the investigation and campus conduct proceeding;

- The right to give testimony in a campus hearing by means other than being in the same room with the accused individual;
- The right to provide investigators with the names of witnesses and relevant questions;
- The right to be fully informed of campus conduct rules and procedures as well as the nature and extent of all alleged violations contained within the complaint;
- The right to have the College arrange the presence of student, faculty and staff witnesses, and the opportunity (if desired) to ask questions, directly or indirectly, of witnesses present (including the accused individual), and the right to challenge documentary evidence.
- The right to be present for all testimony given and evidence presented before the conduct body;
- The right to have complaints heard by conduct and appeals officers who have received annual sexual misconduct and Title IX training;
- The right to a conduct panel comprised of representatives of both genders;
- The right to have College policies and procedures followed without material deviation;
- The right to be informed in advance of any public release of information regarding the complaint;
- The right to written notice of the outcome and sanction of the hearing.

#### **STATEMENT OF THE RIGHTS OF THE RESPONDENT**

- The right to investigation and appropriate resolution of all credible complaints of sexual misconduct made in good faith to College administrators against the accused individual;
- The right to be treated with respect by College officials;
- The right to be informed of and have access to campus resources for medical, counseling, and advisory services;
- The right to be fully informed of the nature, rules and procedures of the campus conduct process and to timely written notice of all alleged violations within the complaint, including the nature of the violation and possible sanctions;

- The right to a hearing on the complaint, including timely notice of the hearing date, and adequate time for preparation;
- The right not to have irrelevant prior sexual history admitted as evidence in a campus hearing;
- The right to make an impact statement at the campus conduct proceeding and to have that statement considered by the board in determining its sanction;
- The right to appeal the finding and sanction of the conduct body, in accordance with the standards for appeal established by the institution;
- The right to review all documentary evidence available regarding the complaint, subject to the privacy limitations imposed by state and federal law, at least 48 hours prior to the hearing;
- The right to be informed of the names of all witnesses who will be called to give testimony, within 48 hours of the hearing, except in cases where a witness' identity will not be revealed to the accused individual/Respondent for compelling safety reasons (this does not include the name of the alleged victim/Complainant, which will always be revealed);
- The right to a hearing closed to the public;
- The right to petition that any member of the conduct body be removed on the basis of bias;
- The right to have the College arrange the presence of student, faculty and staff witnesses, and the opportunity to ask questions, directly or indirectly, of witnesses present, and the right to challenge documentary evidence.
- The right to have complaints heard by conduct and appeals officers who have received annual sexual misconduct adjudication and Title IX training;
- The right to have College policies and procedures followed without material deviation;
- The right to have an advisor or advocate to accompany and assist in the campus hearing process. This advisor can be anyone, with the exception of legal counsel. The advisor may not take part directly in the hearing itself, though they may communicate with the accused individual as necessary;
- The right to a fundamentally fair hearing, as defined in these procedures;

- The right to a campus conduct outcome based solely on evidence presented during the conduct process. Such evidence shall be credible, relevant, based in fact, and without prejudice;
- The right to written notice of the outcome and sanction of the hearing;
- The right to a conduct panel comprised of representatives of both genders;
- The right to be informed in advance, when possible, of any public release of information regarding the complaint.

*No amendment or revision to this document shall be effective until it has been approved by a two-thirds vote of Faculty Council, a two-thirds vote of Student Senate, approval by the President, and approval by the Board of Trustees.*

Approved by Student Senate, April 18, 2012

Approved by Faculty Council, April 23, 2012

Approved by the President, April 24, 2012

Approved by the Board of Trustees, May 11, 2012

Master Document maintained in the office of the Title IX Coordinator