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| Policy Name: | Policy and Grievance Procedures on Non-Discrimination, Sex-Based Harassment and Sexual Violence | | |
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TABLE OF CONTENTS

| | |
|---|-------------|
| I: Policy Statement on Equal Opportunity, Non-Discrimination, Sex-Based Harassment and Sexual Violence | 3 |
| A. Statement on Equal Opportunity | 3 |
| B. Notice of Non-Discrimination | 3 |
| C. Prohibition of Sex-Based Harassment and Sexual Violence | 3 |
| D. Non-Discrimination in Application | 3-4 |
| II. Scope of this Policy and Grievance Procedures | 4 |
| A. Mercy’s Commitment | 4-5 |
| B. Jurisdiction | 5-6 |
| C. Other Relevant University Policies | 6-7 |
| III. Definitions | 7-18 |
| IV. Reporting Discrimination, Sex-Based Harassment and Sexual Violence at Mercy | 18 |
| A. Non-Confidential Reports | 18 |
| B. Mandatory Reporting Obligations for Non-Confidential Employees | 18 |
| C. Confidential Reporting | 19-20 |
| D. Confidentiality in the Investigation | 20 |
| E. At the First Instance of Disclosure of a Report | 21 |
| F. Policy for Alcohol and/or Drug Amnesty for Students | 21 |
| G. Special Rules Concerning Public Awareness and Advocacy Events | 21 |
| H. Disability Accommodations in Application of this Policy | 22 |
| V. Resources for Complainants Experiencing Sexual Violence | 22 |
| A. Reporting to Law Enforcement | 22 |
| B. Mercy’s Process when Cases are Reported to Outside Law Enforcement | 22-23 |
| C. Obtaining Immediate Medical Attention and Emotional Support | 23 |
| VI. Supportive and Interim Measures | 24 |
| A. Providing Supportive Measures | 24 |
| B. Orders of Protection and Their Equivalent | 25 |
| C. Process for Review of Supportive Measures | 25 |
| D. Emergency Removal | 26 |
| E. Administrative Leave | 26 |
| VII. Grievance Procedures and Bill of Rights for Students Involved in Sex-Based Harassment and Sexual Violence | 26 |
| A. Students’ Bill of Rights | 26-27 |
| B. Filing a Complaint | 27-29 |
| C. Multi-Party Situations and Consolidation of Complaints | 29 |
| D. Allegations Potentially Falling Under Two Policies | 29 |
| E. Dismissal of a Complaint | 30-31 |
| F. Notice of Allegations | 31-32 |
| G. Advisor of Choice and Participation of Advisor of Choice | 32 |
| H. The Investigation | 33-35 |

| | |
|--|--------------|
| I. Live Questioning of Witnesses..... | 35-36 |
| J. Determination Regarding Responsibility and Sanctioning..... | 36-37 |
| K. Code Charges Under these Grievance Procedures | 38-39 |
| L. Disciplinary Sanctions After Finding of Responsibility..... | 39-40 |
| M. Appeals of Determinations..... | 40 |
| N. Transcript Notations..... | 41 |
| O. Retaliation..... | 41 |
| P. Informal Resolution..... | 42-46 |
| VIII. Grievance Procedures for Discrimination Affecting All Community Members and Sex-Based Harassment and Sexual Violence Affecting Non-Student Community Members..... | 47 |
| A. Filing a Complaint..... | 47-48 |
| B. Consolidation of Complaints..... | 48 |
| C. Dismissal of a Complaint..... | 49 |
| D. Notice of Allegations..... | 50 |
| E. Advisor of Choice and Participation of Advisor of Choice..... | |
| F. The Investigation..... | 50-53 |
| G. Retaliation..... | 53 |
| H. Disciplinary Sanctions After Finding of Responsibility..... | 53-54 |
| I. Appeal of Dismissals and Determinations..... | 54-56 |
| J. Informal Resolution..... | 56-60 |
| IX. General Provisions for All Complaints..... | 61 |
| A. Filing External Complaints..... | 61 |
| B. Reporting and Other Actions by Bystanders..... | 61 |
| C. Reporting Retaliation..... | 62 |
| D. No Contact Orders..... | 62 |
| E. Timing..... | 62 |
| F. False and Malicious Allegations..... | 62 |
| G. Recordkeeping..... | 62-63 |
| X. University Obligations Under this Policy..... | 63 |
| A. Dissemination of Policies, Procedures and Notices..... | 63 |
| B. Training and Educational Programming..... | 63-65 |
| XI. Rules Regarding Intimate Relationships..... | 65 |
| A. Relationships Between Faculty or Employees and Students..... | 65 |
| B. Relationships Between Supervisors and Employees..... | 66 |
| XII. Implementation..... | 66 |
| Appendix A: Basic Requirements for Grievance Procedures for All Matters Under this Policy..... | 67-69 |
| Appendix B: Additional Grievance Procedures for Sex-Based Harassment and Sexual Violence Matters Involving Students as Complainant’s and/or Respondents... | 70-72 |
| Appendix C: Mercy University Sexual Violence Resource List..... | 73-76 |

I. POLICY STATEMENT ON EQUAL OPPORTUNITY, NON-DISCRIMINATION, SEX-BASED HARASSMENT AND SEXUAL VIOLENCE

A. Statement on Equal Opportunity

Mercy University is committed to achieving full equal opportunity in all aspects of university life. The University shall recruit, employ, retain, and promote employees, and shall admit and provide services for students, without regard to an individual's race, color, creed, national origin, ethnicity, ancestry, religion, age, sex, sexual orientation, sex stereotypes, sex characteristics, gender, gender identity or expression, transgender status, marital status, familial status, partnership status, disability (including HIV/AIDS), genetic information, predisposing genetic characteristics, alienage, citizenship, criminal arrest and conviction records, military or veteran status, salary history, credit history, caregiver status, pregnancy or related conditions, lactation status, sex and reproductive decisions, status as a victim of dating violence/domestic violence/stalking/sex offenses/sex abuse, unemployment status, or any other legally prohibited basis in accordance with federal, state, county and city laws.

B. Notice of Non-Discrimination

Every member of the Mercy University community, including students, employees, applicants for employment, applicants for student admission, contractors, and visitors, deserve the opportunity to live, learn, work, and participate in an environment free from discrimination. As such, Mercy does not discriminate on the basis of race, color, ethnicity, national origin, sex and all other protected characteristics. Mercy University prohibits such discrimination, as well as retaliation in any Education Program or Activity that it operates, including in admissions, continuing enrollment, and employment.

C. Prohibition of Sex-Based Harassment and Sexual Violence

Sex-based harassment is considered discrimination on the basis of sex. Sex-based harassment includes harassment because of gender identity, sexual orientation, sex characteristics, sex stereotypes, and/or pregnancy and other conditions, that is: (1) quid pro quo harassment; (2) hostile environment harassment; as well as what is collectively termed "Sexual Violence," which includes (3) sexual assault; (4) dating violence; (5) domestic violence; or (6) stalking.

D. Non-Discrimination in Application

The requirements and protections of this Policy and Procedure apply equally regardless of sex, sexual orientation, gender identity, gender expression, race, color, national origin, religion, creed, age, disability, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, criminal conviction, or other protected classes covered by

applicable federal, state, or local law. All requirements and protections are equitably provided to individuals regardless of such protected status(es) or status as a Complainant, Respondent, or Witness. Individuals who have inquiries or complaints about this Policy and Grievance Procedure may contact Mercy’s Director of Title IX and Equity Compliance, located in Verrazzano Hall Room 109, or at titleix.equity@mercy.edu or (914) 674-7842; the U.S. Department of Education’s Office for Civil Rights at <https://ocrcas.ed.gov/contact-ocr>; or the New York State Division of Human Rights (DHR) at <https://dhr.ny.gov/complaint>.

This Policy and Grievance Procedure on Non-Discrimination, Sex-Based Harassment and Sexual Violence can be found at <https://www.mercy.edu/about/title-ix>, along with information for reporting violations of this Policy.

II. SCOPE OF THIS POLICY AND GRIEVANCE PROCEDURES

This Policy prohibits discrimination on the basis of a person’s protected characteristics (as set forth in the Notice of Non-Discrimination above), as well as sex-based harassment, and sexual violence which includes sexual assault, dating violence, domestic violence, and stalking, as well as retaliation, against students, employees, or other individuals who are participating or attempting to participate in its Education Program or Activity, including but not limited to applicants for student admission or employment, and contractors and visitors (hereinafter also known as “**Mercy University Community Members**”), all of whom can be either the victim of prohibited discrimination or retaliation (“Complainant”) or the person accused of such conduct (“Respondent”).

Mercy University has adopted grievance procedures that provide for the prompt and equitable resolution of discrimination, sex-based harassment and sexual violence complaints made by Community Members, or by the Director of Title IX and Equity Compliance, alleging any action that would be prohibited by federal, state or local laws, including but not limited to federal Title IX and the Title IX regulations, Title VI, Title VII, New York State Education Laws Article 129A and 129B, and the New York State Human Rights Law.¹

A. Mercy’s Commitment

In furtherance of this Policy, Mercy is committed to fulfilling the following actions:

- Define conduct that constitutes prohibited discrimination, harassment, sexual assault, stalking, dating violence, domestic violence and retaliation under the relevant laws and regulations, including but not limited to federal Title VI, Title VII and Title IX, New York

¹ This Policy applies to incidents that occur on or after August 1, 2024. Any incidents reported under this Policy that occurred on or before July 31, 2024, will be processed through the Mercy’s Policy on Sexual Misconduct for sexual harassment and sexual assaults and Mercy University’s Policy on Equal Opportunity and Non-Discrimination for incidents relating to all other forms of discrimination.

State Education Law Articles 129A and B, and New York State, New York City and Westchester County Human Rights Laws;

- Provide clear guidelines for reporting incidents of discrimination, sex-based harassment, sexual violence and retaliation and a commitment that a Complainants' privacy will be maintained to the greatest extent possible;
- Promptly, effectively, accurately and fairly respond to and investigate allegations that reasonably may constitute discrimination, sex-based harassment and sexual violence, in an effort to remedy the effects of the discrimination, sex-based harassment or sexual violence, and prevent its recurrence. This process includes the utilization of trained, unbiased decision-makers who evaluate all relevant and not otherwise impermissible evidence.
- Refer incidents to law enforcement and for disciplinary action when appropriate, and to investigate and address all allegations of retaliation;
- Provide ongoing assistance and supportive measures to students and employees who are involved in complaints under this Policy, including both complainants and respondents. These efforts may include the provision of information regarding where and how to obtain supportive services both on and off-campus, information about their rights under federal law, state law, and Mercy policy, and information about the process of filing a complaint with the University and external agencies;
- Provide awareness and prevention information on discrimination, sex-based harassment and sexual violence; widely disseminate this Policy; widely disseminate the Mercy University Students' Bill of Rights, which contains information on available campus-based and local resources; and implement training and educational programs related to this Policy; and
- Gather and analyze information and data that will be systematically reviewed to improve safety, reporting, responsiveness, and the resolution of discrimination, sex-based harassment and sexual violence incidents at Mercy University.

B. Jurisdiction

This Policy applies to all forms of discrimination against all Mercy University community members, which includes students, employees, applicants for student admission and employment,

contractors, and visitors and which occurs under Mercy University's Education Program or Activity in the United States.²

For sex discrimination matters specifically addressed by federal Title IX regulations:

- The conduct alleged occurred on or after August 1, 2024;
- The conduct alleged occurred in the United States;
- The conduct alleged occurred in Mercy's Education Program or Activity; and
- The conduct alleged, if true, would constitute Sex-Based Harassment as defined in this Policy.

Conduct that occurs under Mercy's Education Program or Activity includes but is not limited to conduct that occurs in a building owned or controlled by a student organization that is officially recognized by Mercy, and conduct that is subject to Mercy's disciplinary authority under Mercy's Student Code of Conduct.

If all of the elements of jurisdiction are met, Mercy will investigate the allegations according to this Policy as appropriate, unless informal resolution is pursued or if there are grounds for dismissal of the complaint.

Within this Policy, two separate grievance procedures provide for addressing:

- (1) Sex-based harassment and sexual violence relating to students Respondents and Complainants, so as to align with federal Title IX regulations and the New York State Education Law, and
- (2) All forms of discrimination committed against all University community members, regardless of their role (employee, student, contractor, visitor), as well as sex-based harassment and sexual violence that is related to all community members except students.

C. Other Relevant University Policies

- **Reasonable Accommodations.** The University is committed to providing reasonable accommodations to individuals with disabilities, individuals observing religious practices, and employees and students who have pregnancy or childbirth-related medical conditions in accordance with reasonable accommodations policies. Separate procedures stipulate how community members may request and seek review of decisions concerning reasonable accommodations for a disability. These are set forth in Mercy's [*Policy and Procedures for*](#)

² Although this Policy applies to incidents occurring in the United States, Mercy has an obligation to address discriminatory hostile environment under its Education Program or Activity, even when some conduct alleged to be contributing to the hostile environment occurred outside of Mercy's Education Program or Activity or outside the United States.

[Implementing Reasonable Accommodations and Academic Adjustments for Students, Mercy's Policy and Procedures for Implementing Reasonable Accommodations for Employees,](#) and Mercy's [Lactation Policy.](#)

- **FERPA:** The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds from the US Department of Education. FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the student when he/she/they reach the age of 18 or attend a school beyond high school. Students to whom the rights have transferred are "eligible students."

Title IX regulations clarify that Mercy must comply with Title IX and the 2024 final Title IX regulations in the event of a conflict with State law or FERPA, and that Title IX and the final regulations do not override any legal right of a parent, guardian, or other authorized legal representative to act on behalf of a complainant, respondent, or other person.

- **Paid and Unpaid Leaves:** Other policies relating to meal plans, lactation, personal care attendants, Family Medical Leave and other leaves can be found on the Mercy University website: <https://www.mercy.edu/about/mercy-university-policies>.
- **Abusive Conduct and Campus Violence/Maintenance of Public Order.** Mercy prohibits all forms of abusive, harassing or threatening behavior (whether discriminatory or not) as set forth in the [Policy Against Abusive Conduct](#) and [Policy on the Maintenance of Public Order and Campus Violence.](#)

When conduct may involve more than one policy, the University will in its sole discretion determine which policy or policies shall govern the handling of a potential violation, based on the circumstances of the allegation and the terms of any other policy. An individual who has a question about which policy applies in a specific instance can contact the University's Director of Equity Compliance at TitleIX.Equity@mercy.edu or (914) 674-7842.

III. DEFINITIONS

1. **Accused** means a person accused of a violation who has not yet entered an institution's judicial or conduct process.
2. **Admission** means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an Education Program or Activity operated by Mercy University.

3. **Applicant** mean an individual who has submitted part or all of an application to attend an Education Program or Activity operated by Mercy University.
4. **Bystander** means a person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of the rules or policies of an institution.
5. **Code of conduct** means the written policies adopted by Mercy governing student behavior, rights, and responsibilities while such student is matriculated at Mercy University. The Code of Conduct can be found [here](#).
6. **Contractors** for the purposes of this Policy means contractors, subcontractors, vendors, consultants or other persons providing services pursuant to a contract in the workplace with the University or who is an employee of such a contractor, subcontractor, vendor, consultant or other person providing services pursuant to a contract in the workplace with the University (hereinafter “Contractors”).
7. **Consent** is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant’s sex, sexual orientation, gender identity or gender expression.
 - a. Consent to any sexual act between or with any Party does not constitute consent to any other sexual act.
 - b. Prior consensual sexual activity between or with any Party does not constitute consent to any other sexual act
 - c. In order to give consent, one must be of legal age, which is 17 years or older in New York State.
 - d. Consent is required regardless of whether the person who initiated the sexual act is under the influence of legal or illegal drugs and/or alcohol.
 - e. Consent cannot be given when a person is incapacitated. Incapacitation occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation maybe caused by lack of consciousness or being asleep, being involuntarily restrained, or if the individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.

- f. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
 - g. Consent may be withdrawn at any time, even after it has been initially given. When consent is withdrawn or can no longer be given, all sexual activity must stop.
8. ***Complainant*** means:
- a. A student or employee who is alleged to have been subjected to conduct that could constitute discrimination or harassment as defined in this Policy and who was participating or attempting to participate in Mercy's Education Program or Activity; or
 - b. A person other than a student or employee (including but not limited to an applicant for employment or student admission to Mercy, a contractor or a visitor) who is alleged to have been subjected to conduct that could constitute discrimination or harassment under this Policy and who was participating or attempting to participate in Mercy's Education Program or Activity at the time of the alleged sex-based harassment.
 - c. A Complainant may also be referred to as a Reporting Individual in this Grievance Procedure, in alignment with New York State Education Law Article 129-B.
9. ***Complaint*** means an oral or written request to Mercy to investigate and make a determination about alleged discrimination at the institution. Complaints need not be made in writing or via an official form so long as it objectively can be understood as a request for Mercy to investigate allegations of discrimination, sex-based harassment or sexual violence.
10. ***Confidential Employee*** means a Mercy employee whose communications are privileged under Federal or State law. The employee's confidential status is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies. Confidential employees at Mercy currently include health office staff and mental health counselors.
11. ***Day***, when used in this Policy, means a calendar day other than a Saturday, Sunday or federal or state holiday.
12. ***Director of Title IX and Equity Compliance*** has overall responsibility for implementing this Policy, including but not limited to:
- a. Ensuring his/her/their contact information is provided to applicants for student admission and employment, including name, title, office address, e-mail address,

and telephone number. This information shall be prominently displayed on the University's website;

- b. Receiving all complaints that are not strictly confidential, including providing emergency access in the first instance of disclosure by an individual reporting under this Policy;
- c. Overseeing the investigation of complaints;
- d. Ensuring all persons involved in a complaint are advised of their rights, in writing, under State and Federal laws, and this Policy;
- e. Ensuring investigations are handled in a prompt and thorough manner, maintaining confidentiality when requested and where appropriate, and offering privacy for all persons involved to the greatest extent possible;
- f. Keeping the University President and other appropriate senior administrators informed of ongoing investigations, including findings of misconduct and penalties to be imposed under this Policy;
- g. Ensuring appropriate student education and employee training, including for Non-Confidential Employees (defined below), Hearing Officer(s), Appeals Panel members, advisors and individuals facilitating informal resolution, is conducted;
- h. Ensuring a campus climate assessment is conducted in accordance with relevant law;
- i. Monitoring Mercy's education program or activity for barriers to reporting information about conduct that reasonably may constitute sex discrimination and take steps reasonably calculated to address such barriers; and
- j. Ensuring the University's compliance with federal and state reporting obligations.

13. ***Disciplinary Sanctions*** means consequences imposed on a Respondent following a determination under this Policy that the Respondent violated Mercy's prohibition against discrimination and sex-based harassment.

14. ***Discrimination*** is treating an individual differently or less favorably because of their protected characteristics, which include but are not limited to: race, color, creed, national origin, ethnicity, ancestry, religion, age, sex, sexual orientation, sex stereotypes, sex characteristics, gender, gender identity or expression, transgender status, marital status, familial status, partnership status, disability (including HIV/AIDS), genetic information, predisposing genetic characteristics, alienage, citizenship, criminal arrest and conviction records, military or veteran status, salary history, credit history, caregiver status, pregnancy or related conditions, lactation status, sex and reproductive decisions, status as a victim of dating violence/domestic violence/stalking/sex offenses/sex abuse, unemployment status, or any other legally prohibited basis in accordance with federal, state, county and city

laws.³

15. **Education Program or Activity** means all of the operations of Mercy University, including locations, events, or circumstances over which the Mercy exercised substantial control over both the respondent and the context in which the discrimination occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University.
16. **Employee** means all full-time and part-time employees at all of Mercy University's campuses and locations.
17. **Harassment** is a form of discrimination that consists of unwelcome conduct based on a protected characteristic, including but not limited to, race, color, religion, sex (including sexual orientation, gender identity, or pregnancy), national origin, older age (beginning at age 40), disability, or genetic information (including family medical history) and which has the purpose or effect of unreasonably interfering with an individual's emotional well-being, or work or academic performance or creating an intimidating, hostile or abusive work or academic environment.
 - Under Title VII, in the employment context, harassment becomes unlawful where (1) enduring the offensive conduct becomes a condition of continued employment, or (2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.
 - Under Title VI, in the academic context, unwelcome conduct based on race, color or national origin creates a hostile environment when, based on the totality of the circumstances, it is:
 - subjectively and objectively offensive; and
 - so severe or pervasive that it
 - limits or denies a person's ability to participate in or benefit from the recipient's education program or activity.
 - See 28 below for the definition of sex-based harassment.

Harassment is not small or trivial annoyances that a reasonable person would not feel rises to the level of an ongoing concern. Such conduct can be spoken, written, visual, and/or

³ Mercy University adheres to federal, state and local laws and regulations regarding non-discrimination and affirmative action. Should any federal, state or local law or regulation be adopted that prohibits discrimination based on grounds or characteristics not included in this Policy, discrimination on those additional bases will also be prohibited by this Policy.

physical. Harassment can occur in many mediums and locations, including via email, text, voicemail, social media or other electronic forms of communication or messaging systems, and can occur on campus, at University-sponsored events or programs, or other off-campus venues.

While no list can be exhaustive, some examples of actions that may constitute prohibited harassment may include, but are not limited to:

- Verbal abuse or hostile behavior, which could include insulting, teasing, mocking, degrading, or ridiculing another person or group;
- Inappropriate physical contact, comments, questions, advances, jokes, epithets, or demands;
- Racial slurs, derogatory remarks about a person's accent, or display of racially offensive symbols;
- Unwelcome conduct of a non-sexual nature based on actual or perceived sex, such as mocking a person's appearance or clothing as more suited to a person of the opposite sex, or intentionally using the wrong pronoun to identify a transgender individual;
- Physical assault; or
- Displays or electronic transmission of derogatory, demeaning, or hostile materials.

18. ***Impermissible Evidence***: The following types of evidence, and questions seeking that evidence, are impermissible (i.e., will not be accessed or considered, except by Mercy to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

- a. Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- b. A Party's or witness's records that are made or maintained by a physician, psychologist, or other recognized health professional in connection with the provision of treatment to the Party or witness, unless Mercy obtains that Party's or witness's voluntary, written consent for use in its grievance procedures; and
- c. Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with

the Respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

19. **Party** means Complainant or Respondent.

20. **Peer Retaliation** means retaliation by a student against another student.

21. **Pregnancy or related conditions** means:

- a. Pregnancy, childbirth, termination of pregnancy, or lactation;
- b. Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
- c. Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

22. **Preponderance of evidence** is the standard of evidence used during the investigation and adjudication of discrimination and harassment allegations under this Policy. A preponderance of the evidence means whether it is more likely than not that the discrimination or harassment occurred.

23. **Privacy** is the assurance that an individual or the University will only reveal information about allegations of Sexual Misconduct to those who need to know the information in order to carry out their duties or responsibilities or as otherwise required by law. Individuals who are unable to offer the higher standard of confidentiality under law, but who are still committed to not disclose information more than necessary, may offer privacy.

24. **Relevant** means related to the allegations of discrimination or sex-based harassment under investigation as part of this Grievance Procedure. Questions are relevant when they seek evidence that may aid in showing whether the alleged discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged discrimination occurred.

25. **Remedies** means measures provided, as appropriate, to a Complainant or any other person Mercy identified as having had their equal access to Mercy's Education Program or Activity limited or denied by discrimination or harassment. These measures are provided to restore or preserve that person's access to Mercy's Education Program or Activity after Mercy determines that discrimination occurred.

26. **Respondent** means a person who is alleged to have violated Mercy's prohibition on discrimination.

27. **Retaliation** means intimidation, threats, coercion, or discrimination directed at any person by the University, a student, or an employee or other person authorized by Mercy to provide aid, benefit, or service under Mercy's Education Program or Activity, for the purpose of interfering with any right or privilege secured by federal non-discrimination laws, or because the person has reported information, made a Complaint, testified, assisted or participated or refused to participate in any manner in an investigation, proceeding, informal resolution, or hearing under this Policy, or reported any complaint of discrimination with an external agency.

Examples of retaliation may include, but are not limited to:

- Demotion, termination, denying accommodations, reduced hours or work responsibilities, or the assignment of less desirable shifts for employees;
- Providing grades that are not commensurate with the work performed by a student;
- Publicly releasing personnel files or private student information, such as grades or accommodation-status;
- Refusing to provide a reference or providing an unwarranted negative reference for employees or students; or
- Undermining an individual's immigration status

28. **Sex-Based Harassment** means sexual harassment and other harassment on the basis of sex, including harassment because of gender identity, sexual orientation, sex characteristics, sex stereotypes, and/or pregnancy and other conditions, that is:

(1) **Quid pro quo harassment.** An employee, agent or other person authorized by Mercy's Education Program or Activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;

(2) **Hostile environment harassment.** Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from Mercy's Education Program or Activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- a. The degree to which the conduct affected the Complainant's ability to access Mercy's Education Program or Activity;

- b. The type, frequency, and duration of the conduct;
- c. The Parties' ages, roles within Mercy's Education Program or Activity, previous interactions and other factors about each Party that may be relevant to evaluating the effects of the conduct;
- d. The location of the conduct and the context in which the conduct occurred; and
- e. Other sex-based harassment in Mercy's Education Program or Activity.

While it is not possible to list all circumstances that might constitute Sexual Harassment, the following are some examples of conduct that might constitute such harassment:

- a. Suggestive body language or inappropriate or unwelcome physical contact that does not qualify as Sexual Assault;
- b. Verbal abuse or offensive comments of a sexual nature, including sexual slurs, sexually explicit statements, questions, jokes or anecdotes, degrading words regarding sexuality or gender, suggestive or obscene letters, notes, or invitations;
- c. Making lewd or sexual comments about an individual's appearance, body, or clothing, or comments that are ostensibly flirtatious;
- d. Visual displays or distribution of sexually explicit drawings, pictures, electronic or written materials;
- e. Displaying nudity or engaging in sexual acts in spaces that can be seen by others;
- f. Undue and unwanted attention, such as repeated inappropriate flirting, staring, or making sexually suggestive comments or gestures; or
- g. Offensive comments regarding a person's sexual orientation, gender identity or gender expression, such as persistent mocking or disparagement of a person based on a perceived lack of stereotypical masculinity or femininity.

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

(3) ***Sexual Assault*** (as defined in the Clery Act) means any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

- a. **Sexual Act** means— (i) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight; (ii) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; (iii) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or (iv) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.
- b. **Sexual Assault: Contact** is any sexual contact, including sexual touching for the purpose of sexual gratification of either Party or degrading or abusing such person, without a person’s consent. Sexual touching includes contact under or over clothing with another person’s anus, breasts, buttocks, genitals, groin or inner thigh; touching another person anywhere with any of these body parts; making another person touch any of these body parts under or over clothing; or the emission of ejaculate on the clothing or body of another person.
- c. **Sexual Assault: Penetration** is any form of vaginal, anal, or oral penetration or attempted penetration, however slight, by a penis, object, tongue, or finger without a person’s consent. This term includes incest and statutory rape.

(4) **Dating Violence** (as defined in the Violence Against Women Act (VAWA) Reauthorization of 2022 and the VAWA Amendments to the Clery Act) means any violence committed by a person:

- a. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- b. Where the existence of such a relationship shall be determined based on consideration of the following factors: The length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship.

(5) **Domestic Violence** means any felony or misdemeanor crimes committed by a person who:

- a. Is a current or former partner of the victim under the family or domestic violence laws of New York, or a person similarly situated to a spouse of the victim;
- b. Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- c. Shared a child in common with the victim; or
- d. Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of New York.

(6) **Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- a. Fear for the person's safety or the safety of others; or
- b. Suffer substantial emotional distress.

29. **Sexual Violence** is a term that encompasses sexual assault, dating violence, domestic violence and stalking.

30. **Student** means a person who has gained admission to Mercy University.

31. **Supportive Measures** means individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a Complainant or Respondent, not for punitive or disciplinary reasons, and without fee or charge to the Complainant or Respondent to:

- a. Restore or preserve that Party's access to Mercy's Education Program or Activity, including measures that are designed to protect the safety of the Parties or Mercy's educational environment; or
- b. Provide support during Mercy's Grievance Procedure for discrimination.

32. **Voyeurism** is unlawful surveillance and includes acts that violate a person's right to privacy in connection with their body and/or sexual activity such as:

- a. Viewing another person's sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's consent.
- b. Recording images (e.g. video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness where that person would have a reasonable expectation of privacy, without that person's consent;
- c. Disseminating images (e.g. video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness where that person would have a reasonable expectation of privacy, if the individual distributing the images or

audio knows or should have known that the person depicted in the images or audio did not consent to such disclosure; or

- d. Using or installing, or permitting the use or installation of a device for the purpose of recording another person's sexual activity, intimate body parts or nakedness in a place where the person would have a reasonable expectation of privacy without that person's consent.

IV. REPORTING DISCRIMINATION, SEX-BASED HARASSMENT AND SEXUAL VIOLENCE AT MERCY

A. Non-Confidential Reports

Any Mercy University community member may report discrimination, sex-based harassment and/or sexual violence, whether or not the person reporting is the person alleged to be the victim of the conduct that may constitute discrimination, sex-based harassment or sexual violence. Reports may be made in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Director of Title IX and Equity Compliance, which can be found at <https://www.mercy.edu/about/title-ix>.

The following officials at Mercy will provide privacy, but not confidentiality, upon receiving a report of conduct prohibited by this Policy:

- Director of Title IX and equity Compliance or designee(s);
- Officials with Authority to institute corrective measures under this Policy;
- Managers and Supervisors⁴; and
- All other employees at Mercy who are not designated as confidential resources

B. Mandatory Reporting Obligations for Non-Confidential Employees

Under federal and state law, any employee at Mercy who is not a confidential employee and who either has authority to institute corrective measures on behalf of Mercy or has responsibility for administrative leadership, teaching, or advising in Mercy's Education Program or Activity, or manages and supervises employees at the University, must notify the Director of Title IX and Equity Compliance when the employee has information about conduct that reasonably may constitute discrimination, sex-based harassment or sexual violence.

⁴ **Managers** are employees who have authority to make tangible employment decisions with regard to other employees, including the authority to hire, fire, promote, compensate or assign significant different responsibilities. **Supervisors** are employees who are not managers, but have a sufficient degree of control over the working conditions or one or more employees, which might include evaluating their performance and making recommendations for changes in employment status that are given particular weight.

The following non-confidential Mercy employees who receive information about conduct that reasonably may constitute discrimination, sex-based harassment or sexual violence must immediately report the incident to the Director of Title IX and Equity Compliance (collectively known as “Required Reporters”):

1. ACCESSibility Staff⁵
2. Administrators, including but not limited to:
 - a. Staff Officers
 - b. Provost, Associate Provosts, Deans, Associate Deans
 - c. Academic Unit Heads, including Chairs and Program Directors
 - d. Executive Directors and Directors
 - e. Managers and Supervisors
3. Admissions staff
4. Athletic Department Staff
5. Campus Safety Staff
6. Faculty (including core and adjuncts)
7. Financial Services staff
8. Human Resources Staff
9. PACT counselors
10. President’s Office Staff (including administrative support staff)
11. Residential Life Staff

All other non-confidential employees at Mercy are obligated to either notify the Director of Title IX and Equity Compliance or provide the Director of Title IX and Equity Compliance’s contact information and information about how to make a complaint of discrimination, sex-based harassment or sexual violence to any Community Member who reports an incident that could be a violation under this Policy.

Complainants are encouraged to additionally contact a campus confidential or private resource so that Mercy can take appropriate action in these cases. Some resources for confidential disclosure **not** to the institution can be found in Appendix Ct of this Policy.

C. Confidential Reporting

1. *Student Complainants.* Students who wish to speak to someone who will keep the communications confidential should speak to one of the following:
 - a. Mental Health Counselor at the University Counseling Center; or
 - b. Nurse or nurse practitioner at the University Health Office.

⁵ Staff in the context of requires reporting does not include administrative support staff

These individuals will not report the allegations to the Director of Title IX or other Mercy employees without the student's permission. The only exception is in the case where there is an imminent threat of serious injury to the complainant or another person.

If a student speaks solely to a confidential employee, the University will be limited in its ability to conduct an investigation into the allegations or pursue disciplinary action against the Respondent. Confidential employees will assist students in obtaining other necessary support.

2. *Employee Complainants.* Although Mercy does not directly employ individuals to whom Mercy employees can speak on a confidential basis regarding Sexual Misconduct, free confidential support services are available through the Employee Assistance Program (EAP), which is administered by an outside company. Confidential community counseling resources are also available throughout Westchester County and New York City. *See Appendix C.*

Complainants may use these confidential resources even if they decide not to report allegations of sexual violence or participate in an investigation, Mercy's informal resolution process or the criminal justice process. A complainant who first speaks to a confidential resource may later decide to report allegations to the University or with outside law enforcement.

Note: Under the Clery Act, the University is required to maintain records, advise the government about reports of certain crimes and issue timely warnings when there is a serious, continuing threat to the community. Such reports and warnings do not disclose identifying information.

D. Confidentiality and Privacy in the Investigation

Mercy will keep the identity of any individual who has made a report or complaint of sex discrimination confidential, including the identity of any individual who has made a report or filed a complaint of sex-based harassment, sexual violence or sex discrimination under Mercy's Policy and Grievance Procedures, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding under Mercy's Grievance Procedures.

References made to confidentiality refer to the ability of identified confidential resources to not report crimes and violations to law enforcement or university officials without permission, except for extreme circumstances, such as a health and/or safety emergency or child abuse. References made to privacy mean Mercy offices and employees who cannot guarantee confidentiality but will maintain privacy to the greatest extent possible, and information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify the Director of Title/Equity Compliance or designee, who is responsible for tracking patterns and spotting systemic issues. Mercy will limit the disclosure as much as practicable, even if the Director of Title IX/Equity

Compliance determines that the request for confidentiality cannot be honored.

E. At the First Instance of Disclosure of a Report

Mercy shall ensure that, at a minimum, at the first instance of disclosure by a Complainant to a Mercy representative, the following information shall be presented to the Complainant: “You have the right to make a report to University campus safety, local law enforcement, and/or state police or choose not to report; to report the incident to Mercy; to be protected by Mercy from Retaliation for reporting an incident; and to receive assistance and resources from Mercy.”

F. Policy for Alcohol and/or Drug Use Amnesty for Students

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

G. Special Rules Concerning Public Awareness and Advocacy Events

Mercy supports public awareness events that help provide its community with information about Sexual Misconduct and how it can be addressed and prevented. In order to preserve the ability to participate freely in public awareness and advocacy events, if an individual discloses information about sex-based harassment or sexual violence at such event (for example, Take Back the Night gatherings, candlelight vigils, or protests) or on online platforms, Mercy is not obligated to act in response to the information, unless it indicates an imminent and serious threat to the health or safety of a Complainant, any students, employees, or other persons. Such individuals are encouraged to report such incidents to the University Director of Title IX and Equity Compliance.

However, in all cases Mercy must use this information to inform its efforts to prevent sex-based harassment, including by providing tailored training to address alleged sex-based harassment in a particular part of its Education Program or Activity or at a specific location when information indicates there may be multiple incidents of sex-based harassment.

Nothing in Title IX or this policy obligates Mercy to require its Director of Title IX and Equity Compliance or any other employee to attend such public awareness events.

H. Disability Accommodations in Application of this Policy

This Policy does not alter Mercy's obligations under applicable federal, state and local disability laws, including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973, among others. Parties may request reasonable accommodations for disclosed disabilities to the Director of Title IX and Equity Compliance at any point before or during the procedures herein that do not fundamentally alter the Procedures. The Director of Title IX and Equity Compliance will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities.

If the Complainant or Respondent discloses a disability, the Director of Title IX and Equity Compliance may consult, as appropriate, with the Office of ACCESSIBILITY to provide support to students with disabilities to determine how to comply with applicable law including, without limitation, Section 504 of the Rehabilitation Act of 1973 in the implementation of any Supportive Measures, or any other reasonable accommodations requested during the Procedures herein.

V. RESOURCES FOR COMPLAINANTS EXPERIENCING SEXUAL VIOLENCE

A. Reporting to Law Enforcement

Students, employees and all other Community Members are strongly encouraged to report sexual violence that occurred on or off-campus to local law enforcement and/or state police ("outside law enforcement"). Mercy does not require that a Complainant report sexual violence to outside law enforcement; nor will Mercy do so without the complainant's agreement, except in exceptional circumstances. The University may report sexual violence to outside law enforcement without the Complainant's consent when the University determines that the Respondent poses a serious continuing threat to the physical safety of the Complainant or another person.

If a Complainant chooses to report sexual violence to outside law enforcement, Mercy will provide assistance. The University shall have an appropriately trained employee available at all times to provide the Complainant with information regarding options to proceed, including information regarding the criminal justice process and the preservation of evidence. Campus Safety officers can also assist the Complainant with filing a complaint both on and off-campus, and in obtaining immediate medical attention and other services.

B. Mercy's Process When Cases are Reported to Outside Law Enforcement

In cases where the complainant reports allegations to outside law enforcement authorities as well as to Mercy, Mercy must determine what actions to take based on its own investigation. Mercy may coordinate with outside law enforcement authorities in order to avoid interfering with their

activities and, where possible, to obtain information regarding their investigation. Neither a law enforcement determination whether to prosecute a Respondent, nor the outcome of any criminal prosecution, shall be the deciding factor as to whether the respondent has committed a violation of this Policy.

Complainants should be aware that Mercy procedures and standards differ from those of criminal law. When Mercy investigates allegations of sexual violence or brings disciplinary proceedings for violations of this Policy and grievance procedures, the issue being evaluated is whether the Respondent violated Mercy policy. The standard applied in making this determination is whether the preponderance of the evidence supports a finding of responsibility (or whether it is more likely than not that the alleged conduct occurred). An individual found to have violated this Policy may be sanctioned by the University. In the criminal justice system, on the other hand, the issue is whether the accused violated criminal law. The standard applied is proof beyond a reasonable doubt and an individual found guilty of a crime is subject to criminal penalties, such as incarceration, probation, and fines.

C. Obtaining Immediate Medical Attention and Emotional Support

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

On-campus resources, at no cost to students, include a nurse/nurse practitioner and registered nurses, as well as licensed mental health counselors through the Health and Wellness Center. Please visit the University's website at: <https://www.mercy.edu/student-affairs/health-wellness-center> for more information about obtaining assistance.

A list of local off-campus resources can be found in Appendix C of this Policy and on the Mercy University website at <https://www.mercy.edu/about/title-ix>, which includes rape crisis centers, anonymous and confidential reporting hotlines, mental health counseling, victim advocacy services, legal assistance, and visa immigration services available throughout Westchester County and New York City. This list also includes a designation of which local hospitals are designated as SAFE (Sexual Assault Forensic Examination) hospitals, which are specially equipped to handle rapes, including the gathering of evidence. These services are available to both students and employees.

VI. SUPPORTIVE AND INTERIM MEASURES

A. Providing Supportive Measures

Complainants who report allegations of discrimination and sex-based harassment have the right to receive supportive measures from Mercy regardless of whether they file a complaint. Supportive measures are non-disciplinary and non-punitive. Supportive measures may vary depending upon what is reasonably available at Mercy. As appropriate, supportive measures may include without limitation:

- Counseling services
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services, as available
- Restrictions on contact applied to one or more Parties (no contact orders)
- Changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative
- Leaves of absence
- Increased security and monitoring of certain areas of the campus
- Training and education programs related to discrimination and sex-based harassment
- Assistance by Mercy's campus safety in obtaining an order of protection with local law enforcement authorities or court processes.

Supportive measures must not unreasonably burden either Party and must be designed to protect the safety of the Parties or Mercy's educational environment, or to provide support during grievance procedures under this policy or during informal resolution under these procedures.

Mercy may modify or terminate supportive measures at the conclusion of the grievance procedures or may continue them beyond that point within Mercy's discretion.

Mercy will not disclose information about any supportive measures to persons other than the person to whom they apply, including informing one Party of supportive measures provided to another Party, unless necessary to provide the supportive measure or restore or preserve a Party's access to Mercy's Education Program or Activity, or there is an exception that applies, such as:

- Mercy has obtained prior written consent from a person with the legal right to consent to the disclosure;
- To carry out the purpose of the Policy when it is necessary to address conduct that reasonably may constitute discrimination or sex-based harassment in Mercy's Education Program or Activity;
- As required by Federal law, federal regulations, or the terms and conditions of a federal award; or
- To the extent such disclosures are not otherwise in conflict with Title IX, when required by State or local law or when permitted under the Family Educational Rights and Privacy

Act (FERPA) (20 U.S.C. 1232g, or its implementing regulations, 34 CFR Part 99).

B. Orders of Protection and Their Equivalent:

If Mercy receives a copy of an order of protection or its equivalent (for example, restraining order), it must provide a copy of the order to both Parties. The Parties shall have the opportunity to meet or speak with the director of Title IX and Equity Compliance, who can explain the order and answer questions about it, including information from the order about the Accused's/Respondent's responsibility to stay away from the protected person or persons. Parties are entitled to an explanation of the consequences for violating these orders, including without limitation, arrest, additional conduct charges, and interim suspension or emergency removal, as applicable. A Complainant is also entitled to receive assistance from University Campus Safety in calling on and assisting local law enforcement in effecting an arrest for violating such order, in accordance with limits on current law enforcement jurisdiction and procedures.

C. Process for Review of Supportive Measures

Mercy provides for a Complainant or Respondent to seek modification or reversal of Mercy's decision to provide, deny, modify or terminate a supportive measure. Grounds for challenge of supportive measures include, but are not limited to:

- Whether a supportive measure is reasonably burdensome;
- Whether a supportive measure is reasonably available;
- Whether a supportive measure is being imposed for punitive or disciplinary reasons;
- Whether the supportive measure is being imposed without fee or charge; and
- Whether the supportive measure is effective in meeting the purposes for which it is intended, including to restore or preserve access to the Education Program or Activity, provide safety, or provide support during the Grievance Procedure.

Request for a modification or reversal of a supportive measure must be timely and should be submitted within five (5) days to the Director of Title IX and Equity Compliance, who will ensure that the review is conducted by the relevant vice president or dean, depending on the status of the Respondent. The vice president or dean shall be an impartial employee of Mercy and who did not make the challenged decision on the original supportive measure request. The vice president or dean who makes this determination will have the authority to modify or reverse the decision if he/she/they determine that the decision to provide, deny, modify or terminate the supportive measure was inconsistent with the procedures as outlined above for providing supportive measures.

Parties are only allowed to challenge their own individual supportive measures. Challenges by one Party will not be heard to supportive measures afforded to the opposite Party, unless that supportive measure directly impacts the Party making such challenge (i.e., two-way no contact orders).

D. Emergency Removal

Mercy retains the authority to remove a Respondent from all or part of Mercy's Education Program or Activity on an emergency basis, where Mercy (1) undertakes an individualized safety and risk analysis, and (2) determines that an imminent and serious threat to the health or safety of a Complainant or any students, employees, or other persons arising from the allegations of discrimination or sex-based harassment justifies removal.

Mercy will provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal. The request must be made to the Director of Title IX and Equity Compliance, who will ensure the review is conducted by the relevant vice president or dean, depending on the status of the Respondent. The decisionmaker who hears a challenge to an emergency removal shall not be involved in any decision regarding responsibility or appeal of a determination.

Emergency removals will not be considered relevant evidence that can be considered in reaching a determination of whether discrimination or sex-based harassment occurred.

E. Administrative Leave

Mercy retains the authority to place a non-student employee Respondent on administrative leave during the Grievance Procedure, consistent with relevant Handbooks and Collective Bargaining Agreements.

VII. GRIEVANCE PROCEDURES AND BILL OF RIGHTS FOR STUDENTS INVOLVED IN SEX-BASED HARASSMENT AND SEXUAL VIOLENCE

Reports of sex-based harassment or sexual violence involving a student as a Complainant or as a Respondent received by all Mercy employees, with the exception of Confidential Employees, will be addressed through these Grievance Procedures. The list of basic legal requirements for grievance procedures for all discrimination matters are set forth in Appendix A. Additional legal requirements for students who are Complainants or Respondents in sex-based harassment and sexual violence matters are set forth in Appendix B. These requirements set forth in both appendices are incorporated in this Section VI as well.

A. Students' Bill of Rights

Pursuant to New York State Law, all students have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of Domestic Violence, Dating Violence, Stalking, and Sexual Assault treated seriously;

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

B. Filing a Complaint

1. Who can make a Complaint?

- A Complainant (as defined in Section III(8) of this Policy); or
- The Director of Title IX.

2. Director of Title IX Initiated Complaints

In the absence of a Complaint or the withdrawal of any or all of the allegations in a complaint, and in the absence or termination of an Informal Resolution process, the Director of Title IX must determine whether to initiate a complaint of sex-based harassment or sexual violence. This determination is fact-specific, and the Director of Title IX must consider:

- The Complainant's request not to proceed with the initiation of a complaint;
- The Complainant's reasonable safety concerns regarding initiation of a complaint;
- The risk that additional acts of sex-based harassment or sexual violence would occur if a complaint is not initiated;
- The severity of the alleged sex-based harassment/sexual violence, including whether the sex-based harassment or sexual violence, if established, would require the removal

- of a Respondent from campus or imposition of another disciplinary sanction to end the sex-based harassment/sexual violence and prevent its recurrence;
- The age and relationship of the parties, including whether the Respondent is an employee of Mercy;
 - The scope of the alleged sex-based harassment/sexual violence, including information suggesting a pattern, ongoing sex-based harassment/sexual violence, or sex-based harassment/sexual violence alleged to have impacted multiple individuals;
 - The availability of evidence to assist a decisionmaker in determining whether sex-based harassment/sexual violence occurred; and
 - Whether Mercy could end the alleged sex-based harassment or sexual violence and prevent its recurrence without initiating this Grievance Procedure.

If after considering these and other relevant factors, the Director of Title IX determines that the conduct as alleged present as an imminent and serious threat to the health or safety of the Complainant or other person, or that the conduct as alleged prevents Mercy from ensuring equal access on the basis of sex to its Education Program or Activity, the Director of Title IX may initiate a Complaint.

If the Director of Title IX initiates the complaint after making this determination, the Director of Title IX must notify the Complainant prior to doing so and appropriately address reasonable concerns about the Complainant's safety or the safety of others, including by providing Supportive Measures as listed in Section VI of this Policy.

3. Is there a particular format that the Complaint needs to be in?

As defined in III(9) of this Policy, a complaint can be an oral or written request to Mercy that objectively can be understood as a request for Mercy to investigate and make a determination about alleged sex-based harassment or sexual violence at the University. While a complaint need not be in writing, in certain circumstances, the Director of Title IX may request the complaint to be in writing via Mercy's online reporting form.

4. Who can I report a Complaint to?

Any reports of sex-based harassment or sexual violence may be made directly to the Director of Title IX, whose contact information is listed at the beginning of this Grievance Procedure. Additionally, reports can be made to any Mercy University Required Reporter, who shall be required to report the matter to the Director of Title IX. All other non-confidential employees at Mercy are obligated to either notify the Director of Title IX and Equity Compliance or provide the Director of Title IX and Equity Compliance's contact information and information about how to make a complaint of discrimination, sex-based harassment or sexual violence to any Community Member who reports an incident that could be a violation under this Policy. *See* Section IV. above regarding additional reporting processes at Mercy.

5. *What is the timeframe for Mercy to evaluate if the Director of Title IX is initiating an investigation under this Grievance Procedure?*

The Director of Title IX must evaluate whether the complaint falls under this Grievance Procedure within five (5) days after the complaint is made and must issue the Notice of Allegations as soon as practicable after the complaint is evaluated. If there are any delays or extensions, the Director of Title IX must appropriately provide notice to the Parties in writing, on a case-by-case basis, with good cause and the rationale for the extension or delay.

6. *Can I make a Complaint and request initiation of the Grievance Procedure even if I have made a complaint to law enforcement?*

Yes. Mercy has an obligation to appropriately evaluate all complaints, regardless of whether there is a concurrent or prior complaint before law enforcement. This process is an administrative process that is different from the criminal justice process. Per New York state law, it is required that Mercy's process run concurrently with a criminal justice investigation and proceeding, however, temporary delays are allowed as requested by external municipal entities while law enforcement gathers evidence. Temporary delays should not last more than ten days except when law enforcement specifically requests and justifies a longer delay.

C. Multi-Party Situations and Consolidation of Complaints

Mercy may consolidate complaints alleging sex-based harassment and sexual violence against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against the other Party, where the allegations of sex-based harassment or sexual violence arise out of the same facts or circumstances.

Mercy can consider factors when making this fact-specific determination, which include, but are not limited to:

- The facts and circumstances of the particular complaints when deciding whether to consolidate, including the toll of separate proceedings on the Parties; and
- Any risks to the fairness of the investigation or outcome.

D. Allegations Potentially Falling Under Two Policies

If the alleged conduct, if true, includes conduct that would constitute covered sex-based harassment or sexual violence, and conduct that would not constitute covered sex-based harassment or sexual violence, this Grievance Process will be applied in the investigation and adjudication of all of the allegations.

E. Dismissal of a Complaint

1. Grounds for Dismissal

Mercy may dismiss a complaint of sex-based harassment or sexual violence for any of the following reasons:

- Mercy is unable to identify the Respondent after taking reasonable steps to do so;
- The Respondent is not participating in Mercy's Education Program or Activity and is not employed by Mercy;
- The Complainant voluntarily withdraws any or all of the allegations in the complaint, the Director of Title IX declines to initiate a complaint of these procedures, and Mercy determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex-based harassment or sexual violence under this Policy and grievance procedure even if proven; or
- Mercy determines that the conduct alleged in the complaint, even if proven, would not constitute sex-based harassment or sexual violence under this Policy grievance procedure. Note: Mercy must make reasonable efforts to clarify the allegations with the Complainant before dismissing under this basis.

2. Notice of Dismissal

- If Mercy dismisses a complaint, Mercy shall promptly notify the Complainant of the basis for dismissal.
- If the dismissal of the complaint occurs before a Notice of Allegations is issued to the Respondent, the Director of Title IX does not need to provide notice to the Respondent at that time. However, if the Complainant appeals the dismissal, the Respondent will need to be noticed of the complaint allegations and given an opportunity to respond to the dismissal.
- If the dismissal occurs after the Respondent has been notified of the allegations, then Mercy must notify the Respondent and Complainant of the dismissal and the basis for the dismissal simultaneously in writing.
- Appeal rights must also be outlined in any notification of dismissal of a complaint, as included below under *Appeal of Dismissals*.

3. Appeals of Dismissals

Mercy must notify the Complainant that a dismissal may be appealed and provide the Complainant with an opportunity to appeal the dismissal of a complaint on the following grounds:

- Procedural irregularity: procedural irregularity that affected the outcome of the matter (i.e., a failure to follow Mercy's own policy to a degree that had material effect on the outcome of the matter);

- New evidence: New evidence that would change the outcome and that was not reasonably available when the determination whether sex-based harassment or sexual violence occurred or dismissal of the complaint was made; and
- Conflict of interest or bias on the part of the Director if Title IX, or other investigator or decisionmaker, for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome of the matter.

If the dismissal occurs after the Respondent has been notified of the allegations, then Mercy must also notify the Respondent that the dismissal may be appealed on the grounds set out above.

The submission of appeal stays any sanctions for the pendency of an appeal. Supportive measures and remote learning opportunities (if possible) remain available during the pendency of the appeal. If a Party appeals, Mercy will as soon as practicable notify the other Party in writing of the appeal, however the time for appeal shall be offered equitably to all Parties and shall not be extended for any Party solely because the other Party filed an appeal.

Appeals will be decided by the three-person Title IX and Equity Appeal Panel, who will be free of conflict of interest and bias. Outcome of appeal will be provided in writing simultaneously to both Parties, and include rationale for the decision.

F. Notice of Allegations

Upon initiating Mercy’s Grievance Procedures, the Director of Title IX shall provide notice of allegations in writing to the Parties whose identities are known. Such notice will occur as soon as practicable after Mercy receives a complaint, if there are no extenuating circumstances. Mercy will provide the Notice of Allegations within five (5) days after receiving a complaint.

1. What does the Notice of Allegations Include?

The written Notice of Allegations shall include:

- Mercy’s Grievance Procedures and Informal Resolution Process;
- Sufficient information available at the time of the issuance of the Notice of Allegations to allow the Parties to respond to the allegations, which includes the identities of the Parties involved in the incident(s), the conduct alleged to constitute sex-based harassment or sexual violence under the Grievance Procedures, and the date(s) and location(s) of the alleged incident(s), to the extent that information is available to Mercy;
- A statement that the Parties are entitled to an accurate description of the relevant and not otherwise impermissible evidence, with an equal opportunity for the Parties to access the underlying Relevant and not otherwise impermissible evidence upon request of any Party;
- A statement that the Respondent is presumed not responsible for the alleged sex-based harassment/sexual violence until a determination is made at the conclusion of Mercy’s Grievance Procedure and that prior to the determination, the Parties will have an

opportunity to present Relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker;

- Parties may have an advisor of their choice, and that the advisor may be, but is not required to be, an attorney;
- Mercy's code of conduct prohibits knowingly making false statements or knowingly submitting false information to any University official; and
- If, in the course of an investigation, Mercy decides to investigate additional allegations of sex-based harassment or sexual violence by the Respondent toward the Complainant that are not included in the original written Notice of Allegations provided, Mercy shall provide written notice of any additional allegations to the Parties whose identities are known.

2. *What if Mercy decides to investigate additional allegations of sex-based harassment or sexual violence?*

If, in the course of an investigation, Mercy decides to investigate additional allegations of sex-based harassment or sexual violence by the Respondent toward the Complainant that are not included in the original issued written Notice of Allegations, or that are included in a complaint that is consolidated under this Grievance Procedure, Mercy shall provide notice of the additional allegations to the Parties whose identities are known.

3. *What if I have safety concerns about a Notice of Allegations being issued to a Respondent?*

To the extent that Mercy has reasonable concerns for the safety of any person as a result of providing a written Notice of Allegations, Mercy through the Director of Title IX, may reasonably delay providing the written Notice of Allegations in order to address the safety concern appropriately. Reasonable concerns must be based on individualized safety and risk analysis and not on mere speculation or stereotypes. All safety concerns should be shared with Mercy through the Director of Title IX or, in certain emergency situations, through Campus Safety.

G. Advisor of Choice and Participation of Advisor of Choice

Mercy will provide the Parties with the same opportunities to be accompanied to any meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of the advisor for the Complainant or Respondent in any meeting or proceeding, except that a witness for either party is not permitted to serve as an advisor. The advisor's role is to be that of a consultant to the Complainant or Respondent, and they may not speak directly with the Director of Title IX during the investigation, the facilitator during the Informal Resolution Process or the Title IX and Equity Appeal Panel during the appeal process.

H. The Investigation

1. General Rules of Investigations

- The Director of Title IX and/or their designee will perform an investigation of the conduct alleged to constitute sex-based harassment or sexual violence in a reasonably prompt timeframe, after issuing the Notice of Allegations.
- Mercy, and not the Parties, have the burden to conduct an investigation that gathers sufficient evidence to determine whether sex-based harassment or sexual violence occurred under this Policy and Grievance Procedure. This burden does not rest with either Party, and either Party may decide not to share their account of what occurred, or may decide not to participate in the investigation or hearing. This does not shift the burden of proof away from Mercy, and does not indicate responsibility.
- Mercy cannot access, consider, or disclose medical records without a waiver from the Party (or parent, if applicable) to whom the records belong, or of whom the records include information. Mercy will provide an equal opportunity for the Parties to present witnesses, including fact and expert witnesses, and other inculpatory or exculpatory evidence, as described below.

2. Notice of Participation

Mercy will provide written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the Party to prepare to participate, if a Party is invited or expected to participate in any such meeting or proceeding.

3. Additional Support Persons Beyond Advisors of Choice

- Parties may have persons other than the advisor of the Parties' choice present during any meeting or proceeding, except that a witness for either party is not permitted to serve as an advisor. As with the advisor, the additional support person may not speak directly with the Director of Title IX during the investigation, the facilitator during the Informal Resolution Process or the Title IX and Equity Appeal Panel during the appeal process.
- Mercy will take reasonable steps to prevent and address the Parties' and their advisors of choice's unauthorized disclosure of information and evidence obtained solely through this Grievance Procedure. Participating individuals who engage in the unauthorized disclosure of information and evidence obtained solely through this Grievance Procedure may be subject to Mercy's Student Code of Conduct and other University policies, procedures and/or Handbooks that may apply.

Note: Disclosures of information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex-based harassment or sexual violence are authorized and not considered unauthorized disclosures potentially subject to other disciplinary action.

4. *Review and Access to Relevant and Not Otherwise Impermissible Evidence*

- Each Party will have an equal opportunity to present fact witnesses and other inculpatory and exculpatory evidence that are Relevant and not otherwise impermissible, to the Director of Title IX and/or designee. The Director of Title IX or designee will review all evidence gathered through the investigation and determine what evidence is Relevant and what evidence is impermissible regardless of relevance, consistent with this Grievance Procedure.
- Each Party and their advisors of choice will have an equal opportunity to review and access the evidence that is Relevant to the allegations of sex-based discrimination or sexual violence and not otherwise impermissible regardless of relevance prior to the conclusion of the investigation. The Director of Title IX and/or designee will provide each Party with a reasonable opportunity to respond to the evidence.
- Mercy will take reasonable steps to prevent and address the Parties' unauthorized disclosure of information and evidence obtained solely through this Grievance Procedure. Participating individuals who engage in the unauthorized disclosure of information and evidence obtained solely through this Grievance Procedure may be subject to Mercy's Student Code of Conduct, and other applicable University policies, procedures and/or Handbooks that may apply.

Note: Disclosures of information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex-based harassment or sexual violence are authorized and not considered unauthorized disclosures potentially subject to other disciplinary action.

5. *Relevant Evidence*

Evidence is relevant when it is related to the allegations of sex-based harassment or sexual violence under investigation as part of this grievance procedure.

Questions are relevant when they seek evidence that may aid in showing whether the alleged sex-based harassment or sexual violence occurred, and evidence is Relevant when it may aid a decisionmaker in determining whether the alleged sex-based harassment or sexual violence occurred.

6. *Impermissible Evidence*

The following types of evidence, and questions seeking that evidence, are excluded as impermissible (i.e., must not be accessed or considered, except by Mercy to determine whether an

exception applies, must not be disclosed, and must not otherwise be used) regardless of whether they are relevant:

- Evidence that is protected under a privileged as recognized by Federal or State law or evidence provided to a Confidential Employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- A Party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or witness, unless Mercy obtains that Party's or witness's voluntary, written consent for use in Mercy's Grievance Procedures; and
- Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent to the alleged sex-based harassment/sexual violence.
- Note: the fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

7. Timeframes

An investigation shall ordinarily take sixty (60) days to complete. If there are any delays or extensions, the Director of Title IX shall appropriately notice the Parties in writing, as detailed below.

8. Extensions and Delays

Mercy allows for the reasonable extension of timeframes on a case-by-case basis for good cause with written notice to the Parties that includes the reason for the extension or delay.

I. Live Questioning of Witnesses

The Director of Title IX or designee will question Parties and witnesses to adequately assess a Party's or witness's credibility to the extent credibility is both in dispute and Relevant to evaluating one or more allegations of sex-based harassment or sexual violence. This will occur during individual meetings with a Party or witness.

- Each Party shall have the opportunity to propose questions that the Party wants asked of any Party or witness and have those questions asked by the investigator/decisionmaker during one or more individual meetings, including follow-up meetings, with a Party or witness, subject to the appropriate procedures outlined below regarding the

decisionmaker's advance evaluation of all questions.

- Each Party will be provided with an audio or audiovisual recording or transcript with enough time for the Party to have a reasonable opportunity to propose follow-up questions.

J. Determination Regarding Responsibility and Sanctioning

1. Standard of Proof

Mercy uses the preponderance of the evidence standard of proof to determine whether or not sex-based harassment or sexual violence occurred. This means that the investigation and hearing determine whether it is more likely than not that a violation of the Grievance Procedures occurred.

2. General Considerations for Evaluating Evidence and Testimony

The Director of Title IX is required to evaluate Relevant and not otherwise impermissible evidence for its persuasiveness. If the Director of Title IX is not persuaded under the applicable standard by the evidence that sex-based harassment or sexual violence occurred, whatever the quantity of the evidence is, the decisionmaker must not determine that sex-based harassment or sexual violence occurred.

Determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the decisionmaker. The Director of Title IX shall not draw inferences regarding a Party or witness' credibility based on the Party or witness' status as a Complainant, Respondent, or witness, nor shall the Director of Title IX base their judgments in stereotypes about how a Party or witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the Party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence. However, credibility judgments should not rest on whether a Party or witness' testimony is non-linear or incomplete, or if the Party or witness is displaying stress or anxiety.

The Director of Title IX will afford the highest weight relative to other testimony to first-hand testimony by Parties and witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e. tending to prove and disprove the allegations) evidence will be weighed in equal fashion.

A witness' testimony regarding third-party knowledge of the facts at issue will be allowed, but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

3. *Communication of the Determination in Writing*

All determinations on whether sex-based harassment or sexual violence occurred will be communicated to the Parties in writing, simultaneously.

The written determination will include:

- A description of the alleged sex-based harassment/sexual violence;
- Information about the policies and procedures that Mercy used to evaluate the allegations;
- The Director of Title IX's evaluation of the relevant evidence and determination on whether Sex-Based Harassment occurred; and
- Mercy's procedures for Complainant and Respondent to appeal.

4. *Timeline of Determination Regarding Responsibility*

If there are no extenuating circumstances, the determination regarding responsibility will be issued by Mercy within ten (10) days of the completion of the last interview.

5. *Past Findings of Sexual Violence*

In accordance with New York State law, past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the disciplinary stage that determines sanction. However, it is not admissible prior to determination of responsibility.

In addition, the Complainant will have an opportunity to make an impact statement during the point of the proceeding where the decisionmaker is deliberating on appropriate sanctions.

6. *Finality of Determination*

The determination regarding responsibility becomes final either on the date that Mercy provides the Parties with the written determination of the result of any appeal, or, if no Party appeals, the date on which an appeal would no longer be considered timely.

7. *Disclosures of Outcome by the Parties*

The Complainant and Respondent have the right to choose whether to disclose or discuss the outcome of a conduct or judicial process related to sex-based harassment or sexual violence. The Complainant and Respondent have the right to have all information obtained during the course of the conduct or judicial process be protected from public release until the appeals panel makes a final determination unless otherwise required by law.

K. Code Charges Under these Grievance Procedures

1. *Code Charge 1: Sex-Based Harassment*: sexual harassment and other harassment on the basis of sex, including harassment because of gender identity, sexual orientation, sex characteristics, sex stereotypes, and/or pregnancy and other conditions, that is:

- A. *Quid pro quo harassment.* An employee, agent or other person authorized by Mercy's Education Program or Activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;
- B. *Hostile environment harassment.* Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from Mercy's Education Program or Activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:
- (i) The degree to which the conduct affected the Complainant's ability to access Mercy's Education Program or Activity;
 - (ii) The type, frequency and duration of the conduct;
 - (iii) The Parties ages, roles at Mercy, previous interactions and other factors that may be relevant to evaluating the effects of the conduct
 - (iv) The location of the conduct and the context in which the conduct occurred; and
 - (v) Other sex-based harassment or sexual violence committed in Mercy's Education Program or Activity.

2. *Code Charge 2: Sexual Assault:* as defined in the Clery Act, meaning any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent;

3. *Code Charge 3: Dating Violence:* as defined in the Violence Against Women Act (VAWA) Reauthorization of 2022 and the VAWA Amendments to the Clery Act, is any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) Where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) the type of relationship; and (iii) The frequency of interaction between the persons involved in the relationship.

4. *Code Charge 4: Domestic Violence:* any felony or misdemeanor crimes committed by a person who: (A) is a current or former partner of the victim under the family or domestic violence laws of New York, or a person similarly situated to a spouse of the victim; (B) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; (C) shared a child in common with the victim; or (D) commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of New York.

5. *Code Charge 5: Stalking*: engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (A) fear for the person's safety or the safety of others; or (B) suffer substantial emotional distress.

L. Disciplinary Sanctions After Finding of Responsibility

1. Action Against Student Respondents

The Director of Title IX Director must provide the determination of finding of responsibility against a student to the Vice President for Student Affairs. Following receipt of the determination finding responsibility under these Grievance Procedures, the Vice President for Student Affairs, when warranted by the facts, authorize such action as they deem necessary, including action to correct the effects of the conduct investigated or prevent further harm to an affected party or others similarly situated. Sanctions for student Respondents range from a warning, to suspension or expulsion from the University, as well as suspension or removal from housing, and imposing no-contact orders.

When the Vice President for Student Affairs recommends discipline against a student for violations of this Policy, the matter is referred to the Office of Community Standards and Student Conduct and action must be taken in accordance with the Judicial Process in the Student Handbook. When a finding results in a penalty of expulsion or suspension for one term or more, the respondent must be barred from attendance at Mercy while the penalty is being served. Students may also be subject to Mercy's policy on transcript notations, discussed in Section N below.

2. Action Against Employee Respondents

The Director of Title IX must provide the determination of finding of responsibility to the Executive Director of Human Resources. Following receipt of the report finding responsibility under these Grievance Procedures, the Director of Human Resources must, in consultation with other relevant officials including the Provost and/or school dean when faculty are involved, when warranted by the facts, authorize such action as they deem necessary, including action to correct the effects of the conduct investigated or prevent further harm to an affected party or others similarly situated. In cases where the Executive Director of Human Resources recommends discipline against an employee, the matter is referred for disciplinary action in accordance with any applicable University handbooks, policies, rules and collective bargaining agreements. Penalties for employees include, depending on the employee's title, reprimand, suspension, demotion, fine, or termination of employment following applicable disciplinary procedures.

3. Action Against Visitors and Contractors

In cases where the Respondent is found responsible of violations of this Policy is not a Mercy student or employee, the University's ability to take action against the Respondent is usually limited. The University will, however, take appropriate actions within its control, such as

restricting the visitor's access to campus and campus events and activities. If the Respondent is a contractor, Mercy may ask that that individual be removed from Mercy's account.

M. Appeals of Determinations

Each Party may appeal a determination regarding responsibility. The Director of Title IX shall inform the Parties of their right to appeal the decision. To appeal, a Party must submit their written appeal within five (5) days of being notified of the decision, indicating the grounds for appeal.

For appeals resulting from dismissal of a complaint, please see the section on *Dismissal of Complaints*.

1. Grounds for Appeal

The limited grounds for appeal available are as follows:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available when the determination whether sex-based harassment or sexual violence occurred or dismissal was made; and
- The Director of Title IX, investigator, or decisionmaker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome.

Note: *Appeals relating to disciplinary sanctions imposed are addressed through the appropriate Handbook or Collective Bargaining Agreement.*

2. Additional Procedures for Appeal Process

Mercy will notify the Parties of any appeal, provide the Parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome, and will notify the Parties of the result of the appeal and the rationale for the result.

The submission of an appeal stays (or pauses) any sanctions for the period during which an appeal determination is being assessed. Supportive measures and remote learning opportunities remain available while an appeal is being deliberated and before a final decision has been made.

Appeals will be decided by the Title IX and Equity Appeal Panel who will be free of conflict of interest and bias. The Title IX and Equity Appeal Panel will make a recommendation to the President of the University regarding whether the determination should be sustained or overturned. The President's decision on the appeal is final.

N. Transcript Notations

When a student Respondent is found responsible and the penalty is either suspension or expulsion, Mercy must place a notation on the Respondent's transcript stating that Respondent "was suspended/expelled after a finding of responsibility for a code of conduct violation."

For expulsion cases, after four years from the date of the conclusion of the disciplinary proceeding, or one year after the conclusion of any suspension (whichever is shorter), the Respondent has the right to request that a transcript notation from a finding of responsibility be removed. However, in cases where a student Respondent was expelled as a result of a Clery Act crime of violence (20 U.S.C. 1092(f)(1)(F)(i)(I)-(VIII)) including but not limited to sexual assault, the notation will not be removed. If a finding of responsibility is vacated for any reason, the notation must be removed. See [Mercy's Transcript Notation Policy](#).

O. Retaliation

When Mercy has information about conduct that reasonably may constitute retaliation under its Policy or Grievance Procedures, Mercy is obligated to initiate its Grievance Procedures. In addition to the Definition provided in Section III(27), the following constitutes prohibited retaliation under this Policy:

- No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations, or other federal, state or local laws.
- No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under Mercy's Policy or Grievance Procedures.
- Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations, or under this Policy and Grievance Procedures, constitutes Retaliation. This includes any charges filed against an individual for code of conduct violations that do not involve sex discrimination or sex-based harassment, but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a report or complaint of Sex-Based Harassment.

Complaints alleging Retaliation may be filed according to the Grievance Procedures Relating to Non-Discrimination.

P. Informal Resolution

1. Procedures for Entering and Exiting Informal Resolution Process

At any time prior to determining whether sex-based harassment occurred under this Grievance Procedure, including prior to making a complaint, Parties may instead seek Mercy's assistance to resolve allegations of sex-based harassment, and may elect to enter the informal resolution process. ***Under no circumstance will Parties be permitted to informally resolve matters involving allegations of sexual assault involving penetration, or alleged employee-on-student sex-based harassment or sexual violence.***

- The Parties may voluntarily elect to enter Mercy's informal resolution process at any time through an informed written consent. This informed written consent will include all terms of the elected informal process, including a statement that any agreement reached through the process is binding on the Parties.
- No Party may be required to participate in informal resolution, and Mercy may never condition enrollment, employment, or enjoyment of any other right or privilege upon agreeing to informal resolution.
- The Parties may elect to leave the informal resolution process at any point until the informal resolution process is concluded. If a Party elects to leave the informal resolution process, the Grievance Procedure that the Parties paused will continue. In participating in the informal resolution process, the Parties understand that the timeframes governing the Grievance Procedure will temporarily cease, and only reinstate upon reentry into the Grievance Procedure.
- Supportive Measures will be available, or continue to be available if already provided, during an informal resolution process, if elected to proceed. The Director of Title IX will also, to the extent necessary, take other appropriate prompt and effective steps to ensure that sex-based harassment does not continue or recur within Mercy's Education Program or Activity.

2. Notice Prior to Entry into Informal Resolution Process

Before the initiation of an informal resolution process, the Director of Title IX must provide to the Parties a written notice that explains:

- The allegations;
- The requirements of the informal resolution process;
- That, prior to agreeing to a resolution, any Party has the right to withdraw from the informal resolution process and to initiate or resume Mercy's Grievance Procedures;

- That the Parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the Parties from initiating or resuming Mercy's Grievance Procedures arising from the same allegations;
- The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the Parties; and
- What information Mercy will maintain and whether and how Mercy could disclose such information for use in its Grievance Procedures if they are initiated or resumed.

3. *Determination to Approve Entry into Informal Resolution Process*

Even where the Parties agree to submit a matter to informal resolution, the Director of Title IX must approve the decision to move the matter to the informal resolution process and may determine that informal resolution is not appropriate under the circumstances.

Factors that the Director of Title IX or their designee may weigh in considering the appropriateness of the informal resolution process include, but are not limited to, the gravity of the allegations, whether there is an ongoing threat of harm or safety to the campus, whether the Respondent is a repeat offender, whether the alleged conduct would present a future risk of harm to others, and whether the Parties are participating in good faith. This determination is not subject to appeal.

At any time after the commencement of the informal resolution process, the Director of Title IX or their designee may determine that the informal resolution process is not an appropriate method for resolving the matter, and may require that the matter be resolved through the Grievance Procedures. This determination is not subject to appeal.

If informal resolution is approved or denied, Mercy will provide the outcome in writing simultaneously to the Parties. If informal resolution is approved, the Director of Title IX shall also provide the information of the facilitator in writing to the Parties in a reasonable timeframe once the facilitator is assigned.

4. *Role of the Facilitator*

Informal resolution processes are managed by trained facilitators. All facilitators must not be the same person as the investigator or the/a decisionmaker(s) in Mercy's Grievance Procedures. Any person designated to facilitate informal resolution must not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. The Director of Title IX may serve as the facilitator, subject to these restrictions (though not in circumstances when they serve as the investigator).

All facilitators must have specialized training, required by law and regulation. Such training includes:

- Mercy’s obligation to address sex discrimination, including sex-based harassment and sexual violence, in its Education Program or Activity;
- The scope of conduct that constitutes sex discrimination, including sex-based harassment and sexual violence, under Title IX, including the definition of sex-based harassment/sexual violence;
- All applicable notification and information requirements related to parental, family, or marital status, including pregnancy and related conditions, and Mercy’s response to sex discrimination;
- The rules and practices associated with Mercy’s informal resolution process; and
- How to serve impartially, including by avoiding conflicts of interest and bias.

5. *Contents of Informal Resolution Agreements*

Potential terms that may be included in an informal resolution agreement between the Parties include but are not limited to:

- Restrictions on contact; and
- Restrictions on the Respondent’s participation in one or more of Mercy’s education programs or activities or attendance at specific events, including restrictions Mercy could have imposed as remedies or disciplinary sanctions had Mercy determined at the conclusion of the Grievance Procedures that sex-based harassment or sexual violence occurred.

6. *Breach of Informal Resolution Agreements*

If a Party breaches the resolution or if Mercy has other compelling reasons, such as if it learns of any fraud by a Party in entering into the agreement, Mercy may void the agreement and initiate or resume the Grievance Procedures.

7. *Confidentiality:*

In entering the informal resolution process, the Parties agree that any testimony and evidence (including admissions of responsibility) they share or receive during the informal resolution process concerning the allegations of the complaint are confidential while the Parties participate in the informal resolution process. No evidence concerning the allegations obtained within the informal resolution process may be disseminated to any person, provided that any Party to the informal resolution process may generally discuss the allegations under investigation with a parent, friend, advisor, or other source of emotional support, or with an advocacy organization. Should the Parties withdraw from the informal resolution process, information disclosed or obtained for purposes of the informal resolution process may be incorporated into the Grievance Procedures, provided that this information is disclosed and reviewed by the Parties under Mercy’s Grievance Procedures.

8. *Informal Resolution Options*

Mercy offers the following informal resolution procedures for addressing complaints of sex-based harassment or sexual violence described under this Grievance Procedures:

a. Administrative Resolution

Should the Parties mutually determine to enter the informal resolution process, and the Respondent elects to accept responsibility for the allegations of the complaint at any point during the informal resolution process, the institution may administratively resolve the complaint.

Where the Respondent admits responsibility, the Parties will receive simultaneous written notification of the acceptance of responsibility, and the Title IX and Equity Appeal Panel will convene to determine the Respondent's sanction and other remedies, as appropriate and consistent with institutional policy. The Parties will be given an opportunity to be heard at the sanctions hearing, including without limitation, the submission of impact statements, and the Parties may be accompanied by their Advisor, but questioning of Parties or witnesses will not be permitted. The Parties will receive simultaneous written notification of the decision regarding sanctions and Remedies, which may be appealed according to the process described in these Grievance Procedures.

b. Mediation

The purpose of mediation is for the Parties who are in conflict to identify the implications of a student's actions and, with the assistance of a trained facilitator, identify points of agreement and appropriate Remedies to address them. Either Party can request mediation to seek resolution; mediation will be used only with the consent of both Parties, who will be asked not to contact one another during the process. The Director of Title IX will also review any request for mediation, and may decline to mediate based on the facts and circumstances of the particular case. Either Party has the right to terminate the mediation process and choose or resume another option for resolution at any time.

The mediation process will typically commence within ten (10) days after the Title IX Office receives consent to mediate from both Parties and has made its determination to allow informal resolution to go forward. Mediation will continue until concluded or terminated by either Party, the facilitator, or the Title IX Office. During mediation, any potential investigation will halt, and calculations for time frames will be stayed. If the mediation results in a resolution, the disciplinary process will be concluded, and the matter will be closed. If a resolution cannot be reached, the matter will be referred to the Associate Dean for Student Affairs to re-evaluate other options for resolution, including investigation or proceeding forward with the Grievance Procedures.

During mediation, a facilitator will guide a discussion between the Parties. In circumstances where the Parties do not wish to meet face to face, either Party can request "caucus" mediation, and the facilitator will conduct separate meetings. Whether or not the Parties agree to meet face to face,

each Party will be permitted to bring an advisor of their choice to any meetings who may be, but is not required to be, an attorney.

At the conclusion of the mediation, the facilitator will memorialize the agreement that was reached between the Parties. The Director of Title IX will monitor adherence to the proposed solution and close the matter when compliance is satisfactory.

c. Restorative Justice

A restorative justice (“RJ”) Conference is a dialogue, facilitated by an informal resolution facilitator with appropriate training,⁶ intended to restore relationships and repair harm after a conflict has occurred. Both the responsible Party and the individuals affected by the conflict come together to identify what harm was caused and, collaboratively, determine how conflict and trust might be, respectively, resolved and repaired.

A Party may request to engage in RJ at any stage of the disciplinary process, however, restorative justice may not be an appropriate mechanism for all conflicts. To qualify for RJ, the student accused of wrongdoing must accept responsibility and express remorse for the harm that was caused. The harmed Party must also be willing to accept an apology offered by the student accused of wrongdoing. Additionally, all involved Parties must agree to and abide by measurable and timely actions within the scope of this Policy and directives. The Director of Title IX will review any request for RJ, and may decline to initiate RJ based on the facts and circumstances of the particular case.

The RJ Conference proceeds only if all Parties agree to participate willingly. Upon doing so, the RJ process typically commences within ten (10) days after the Title IX Office receives written agreements from all involved Parties. The conference will continue until the conference is successfully concluded or until the Director of Title IX determines that the conference will not be successful. If successful, an agreeable resolution is reached by all involved Parties, at which time the process is concluded, and the matter is resolved. If a resolution cannot be reached, the matter will be referred to the Associate Dean of Student Affairs to re-evaluate other options for resolution.

The Director of Title IX will monitor the Parties’ adherence to their proposed solution and reserves the right to close the matter when compliance is satisfactory.

⁶ This option is subject to Mercy’s ability to secure an appropriately trained facilitator.

VIII. GRIEVANCE PROCEDURES FOR DISCRIMINATION AFFECTING ALL COMMUNITY MEMBERS, AND SEX-BASED HARASSMENT AND SEXUAL VIOLENCE AFFECTING NON-STUDENT COMMUNITY MEMBERS

A. Filing a Complaint

1. *Who can make a Complaint?*

- A student or employee of Mercy who is alleged to have been subjected to conduct that could constitute discrimination under federal, state or local laws, including based on sex, race, ethnicity and religion, for example.
- An employee who alleges discriminatory harassment, which for the purpose of this Grievance Procedure, includes sex-based harassment, and sexual assault, domestic violence, dating violence, and stalking (sexual violence). Note: students who allege sex-based harassment or sexual violence shall have their complaint addressed through the Grievance Procedures set forth in Section VI above.
- A person other than a student or employee, including an applicant for employment or student admission, a contractor or a visitor of Mercy who is alleged to have been subjected to conduct that could constitute discrimination or harassment under this Policy at a time when that individual was participating or attempting to participate in Mercy's Education Program or Activity;
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a Complainant; or
- The Director of Title IX and Equity Compliance.

2. *Director of Title IX Coordinator and Equity Compliance initiated Complaints:* In the absence of a Complaint or the withdrawal of any or all of the allegations in a complaint, and in the absence or termination of an informal resolution process, the Director of Title IX and Equity Compliance must determine whether to initiate a complaint of discrimination. This determination is fact-specific, and the Director of Title IX and Equity Compliance must consider:

- The Complainant's request not to proceed with the initiation of a complaint;
- The Complainant's reasonable safety concerns regarding initiation of a complaint;
- The risk that additional acts of discrimination or harassment would occur if a complaint were not initiated;
- The severity of the alleged discrimination or harassment, including whether the discrimination or harassment, if established, would require the removal of a

Respondent from campus or imposition of another disciplinary sanction to end the discrimination or harassment and prevent its recurrence;

- The age and relationship of the Parties, including whether the Respondent is an employee of the recipient;
- The scope of the alleged discrimination or harassment, including information suggesting a pattern, ongoing discrimination or harassment, or discrimination or alleged to have impacted multiple individuals;
- The availability of evidence to assist a decisionmaker in determining whether discrimination or harassment; and
- Whether Mercy could end the alleged discrimination or harassment and prevent its recurrence without initiating these grievance procedures.

If after considering these and other relevant factors, the Director of Title IX and Equity Compliance determines that the conduct as alleged present as an imminent and serious threat to the health or safety of the Complainant or other person, or that the conduct as alleged prevents Mercy from ensuring equal access to its Education Program or Activity, the Director of Title IX and Equity Compliance may initiate a Complaint.

If the Director of Title IX and Equity Compliance does initiate the complaint after making this determination, the Director of Title IX and Equity Compliance shall notify the Complainant prior to doing so and appropriately address reasonable concerns about the Complainant's safety or the safety of others, including by providing supportive measures as listed in Section VI of this Policy.

3. Format of Complaint

As defined in III(8) of this Policy, a Complaint can be an oral or written request to Mercy that objectively can be understood as a request for Mercy to investigate and make a determination about alleged discrimination at Mercy.

4. Who can I report a Complaint to?

Complaints should be directed to the Director of Title IX and Equity Compliance, whose contact information can be found at <https://www.mercy.edu/about/title-ix>.

B. Consolidation of Complaints

Mercy may consolidate Complaints of discrimination or harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against another Party, when the allegations of discrimination arise out of the same facts or circumstances. When more than one Complainant or more than one Respondent is involved, references below to a Party, Complainant, or Respondent include the plural, as applicable.

C. Dismissal of Complaint

1. Bases for Dismissal

Mercy may dismiss a complaint of discrimination or harassment for any of the following reasons:

- Mercy is unable to identify the Respondent after taking reasonable steps to do so;
- The Respondent is not participating in Mercy's Education Program or Activity and is not employed by Mercy;
- The Complainant voluntarily withdraws any or all of the allegations in the complaint, the Director of Title IX and Equity Compliance declines to initiate a complaint under the bases described in these procedures, and Mercy determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute discrimination or harassment under this Policy or these grievance procedures even if proven; or
- Mercy determines that the conduct alleged in the complaint, even if proven, would not constitute discrimination or harassment under this Policy or these procedures.

Note: Mercy must make reasonable efforts to clarify the allegations with the Complainant before dismissing under this basis.

2. Notice of Dismissal

Upon dismissal, Mercy will promptly notify the Complainant of the basis for the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then Mercy will also notify the Respondent of the dismissal and the basis for the dismissal promptly following notification to the Complainant, or simultaneously if notification is in writing.

Mercy will notify the Complainant that a dismissal may be appealed and will provide the Complainant with an opportunity to appeal the dismissal of a Complaint. If the dismissal occurs after the Respondent has been notified of the allegations, then Mercy will also notify the Respondent that the dismissal may be appealed. Dismissals may be appealed on the following bases:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available when the dismissal was made; and
- The Director of Title IX and Equity Compliance, investigator, or decisionmaker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome.

Appeal rights must also be outlined in any notification of dismissal of a complaint, as outlined below.

D. Notice of Allegations

Upon initiation of Mercy's grievance procedure, Mercy will notify the Parties of the following:

- Mercy's discrimination grievance procedure and any informal resolution process;
- Sufficient information available at the time to allow the Parties to respond to the allegations, including the identities of the Parties involved in the incident(s), the conduct alleged to constitute discrimination or harassment, and the date(s) and location(s) of the alleged incident(s);
- That retaliation is prohibited; and
- The Parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence.

If, in the course of an investigation, Mercy decides to investigate additional allegations of discrimination or harassment by the Respondent toward the Complainant that are not included in the notice provided or that are included in a Complaint that is consolidated, Mercy will notify the Parties of the additional allegations.

E. Advisor of Choice and Participation of Advisor of Choice

Mercy will provide the Parties with the same opportunities to be accompanied to any meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of the advisor for the Complainant or Respondent in any meeting or proceeding, except that a witness for either party is not permitted to serve as an advisor. The advisor's role is to be that of a consultant to the Complainant or Respondent, and they may not speak directly with the Director of Title IX during the investigation, the facilitator during the Informal Resolution Process or the Title IX and Equity Appeal Panel during the appeal process.

F. The Investigation

- Mercy will provide for adequate, reliable, and impartial investigation of Complaints. The burden is on Mercy—not on the Parties—to conduct an investigation that gathers sufficient evidence to determine whether discrimination or harassment occurred.
- Mercy will provide an equal opportunity for the Parties to present fact witnesses and other inculpatory and exculpatory evidence that is relevant and not otherwise impermissible.
- Mercy will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.
 1. *Access Relevant Evidence:*
 - Mercy will provide an equal opportunity to access the relevant and not otherwise impermissible evidence. The Director of Title IX and Equity Compliance will notify the

Parties when the relevant evidence is ready for inspection and the Parties will be permitted to access the evidence.

- Mercy will provide a reasonable opportunity to respond to the evidence or the accurate description of the evidence; and
- Mercy will take reasonable steps to prevent and address the Parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of discrimination are authorized.

2. *Impermissible Evidence*

The following types of evidence, and questions seeking that evidence, are impermissible (*i.e.*, will not be accessed or considered, except by Mercy to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

- Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- A Party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or witness, unless Mercy obtains that Party's or witness's voluntary, written consent for use in its grievance procedure; and
- Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent to the alleged sex discrimination or preclude determination that sex discrimination occurred.

3. *Questioning Parties and Witnesses to Aid in Evaluating Allegations and Assessing Credibility*

- When a party or witness's credibility is in dispute, and such dispute is relevant to evaluating one or more allegations of discrimination, the investigator and/or decisionmaker must have

an opportunity to question any party or witness whose credibility is in dispute in a live format.

- The Director of Title IX and Equity Compliance will question Parties and witnesses to adequately assess a Party's or witness's credibility to the extent credibility is both in dispute and Relevant to evaluating one or more allegations of sex discrimination. This will occur during individual meetings with a Party or witness.
- Each Party shall have the opportunity to propose questions that the Party wants asked of any Party or witness and have those questions asked by the investigator/decisionmaker during one or more individual meetings, including follow-up meetings, with a Party or witness, subject to the appropriate procedures outlined herein regarding the decisionmaker's advance evaluation of all questions. Each Party will be provided with an audio or audiovisual recording or transcript with enough time for the Party to have a reasonable opportunity to propose follow-up questions.

4. *Determination Regarding Responsibility*

Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, Mercy will:

- Use the preponderance of evidence standard of proof to determine whether discrimination or harassment occurred. The standard of proof requires the decisionmaker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness. If the decisionmaker is not persuaded by the evidence, under the applicable standard, that discrimination occurred, whatever the quantity of the evidence is, the decisionmaker will not determine that discrimination occurred.
- Notify the Parties in writing of the determination whether discrimination or harassment occurred, including the rationale for such determination, and the procedures and permissible bases for the Complainant and Respondent to appeal, if applicable;
- Not impose discipline on a Respondent for discrimination or harassment unless there is a determination at the conclusion of the grievance procedure that the Respondent engaged in prohibited discrimination or harassment.
- If there is a determination that discrimination or harassment occurred, the Director of Title IX and Equity Compliance will, as appropriate:

- Coordinate the provision and implementation of remedies to a Complainant and other people Mercy identifies as having had equal access to Mercy's Education Program or Activity limited or denied by discrimination or harassment;
 - Coordinate the imposition of any disciplinary sanctions on a Respondent, including notification to the Complainant of any such disciplinary sanctions; and
 - Take other appropriate, prompt and effective steps to ensure that discrimination or harassment does not continue or recur within Mercy's Education Program or Activity.
- Comply with the grievance procedure before the imposition of any disciplinary sanctions against a Respondent; and
 - Not discipline a Party, witness, or others participating in the grievance procedure for making a false statement based solely on the determination whether discrimination or harassment occurred.

G. Retaliation

When Mercy has information about conduct that reasonably may constitute retaliation under its Policy or Grievance Procedures, Mercy is obligated to initiate its Grievance Procedures. In addition to the Definition provided in Section III(27), the following constitutes prohibited retaliation under this Policy:

- No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations, or other federal, state or local laws.
- No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under Mercy's Policy or Grievance Procedures.
- Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations, or under this Policy and Grievance Procedures, constitutes Retaliation. This includes any charges filed against an individual for code of conduct violations that do not involve sex discrimination or sex-based harassment, but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a report or complaint of Sex-Based Harassment.

Complaints alleging Retaliation may be filed according to the Grievance Procedures Relating to Non-Discrimination.

H. Disciplinary Sanctions After Finding of Responsibility

1. Action Against Student Respondents

The Director of Title IX Director and Equity Compliance must provide the determination of finding of responsibility against a student to the Vice President for Student Affairs. Following receipt of the determination finding responsibility under these Grievance Procedures, the Vice President for Student Affairs, when warranted by the facts, authorize such action as they deem necessary, including action to correct the effects of the conduct investigated or prevent further harm to an affected party or others similarly situated. Sanctions for student Respondents range from a warning, to suspension or expulsion from the University, as well as suspension or removal from housing, and imposing no-contact orders.

When the Vice President for Student Affairs recommends discipline against a student for violations of this Policy, the matter is referred to the Office of Community Standards and Student Conduct and action must be taken in accordance with the Judicial Process in the Student Handbook. When a finding results in a penalty of expulsion or suspension for one term or more, the respondent must be barred from attendance at Mercy while the penalty is being served. Students may also be subject to Mercy's policy on transcript notations, discussed in Section N below.

2. Action Against Employee Respondents

The Director of Title IX and Equity Compliance must provide the determination of finding of responsibility to the Executive Director of Human Resources. Following receipt of the report finding responsibility under these Grievance Procedures, the Director of Human Resources must, in consultation with other relevant officials including the Provost and/or school dean when faculty are involved, when warranted by the facts, authorize such action as they deem necessary, including action to correct the effects of the conduct investigated or prevent further harm to an affected party or others similarly situated. In cases where the Executive Director of Human Resources recommends discipline against an employee, the matter is referred for disciplinary action in accordance with any applicable University handbooks, policies, rules and collective bargaining agreements. Penalties for employees include, depending on the employee's title, reprimand, suspension, demotion, fine, or termination of employment following applicable disciplinary procedures.

3. Action Against Visitors and Contractors

In cases where the Respondent is found responsible of violations under this Policy is not a Mercy student or employee, the University's ability to take action against the Respondent is usually limited. The University will, however, take appropriate actions within its control, such as restricting the visitor's access to campus and campus events and activities. If the Respondent is a contractor, Mercy may ask that that individual be removed from Mercy's account.

I. Appeal of Dismissals and Determinations

Each Party may appeal a determination regarding responsibility. The Director of Title IX and Equity Compliance shall inform the Parties of their right to appeal the decision. To appeal, a Party must submit their written appeal within five (5) days of being notified of the decision, indicating the grounds for appeal.

1. Grounds for Appeals

Appeals from a determination of discrimination or harassment or dismissal of a complaint may be made on the following grounds:

- Procedural irregularity: procedural irregularity that affected the outcome of the matter (i.e., a failure to follow Mercy's own policy to a degree that had material effect on the outcome of the matter);
- New evidence: New evidence that would change the outcome and that was not reasonably available when the determination whether sex-based harassment or sexual violence occurred or dismissal of the complaint was made; and
- Conflict of interest or bias on the part of the Director of Title IX, or other investigator or decisionmaker, for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome of the matter.

Note that appeals relating to disciplinary sanctions are addressed through the appropriate Handbook or Collective Bargaining Agreement.

2. Process for Appeals

Mercy offers the following process for appeals from a dismissal or a determination:

- If the dismissal occurs after the Respondent has been notified of the allegations, Mercy must also notify the Respondent that the dismissal may be appealed on the grounds set out above.

If the dismissal or determination is appealed, Mercy will:

- Notify the Parties of any appeal, including notice of the allegations, if notice was not previously provided to the Respondent;
- Implement appeal procedures equally for the Parties;
- Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the Complaint;
- Ensure that the decisionmaker for the appeal has been trained consistent with the discrimination laws and Title IX regulations;
- Provide the Parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and

- Notify the Parties of the result of the appeal and the rationale for the result.

When a complaint is dismissed, Mercy will, at a minimum:

- Offer supportive measures to the Complainant as appropriate.
- If the Respondent has been notified of the allegations, offer supportive measures to the Respondent as appropriate; and
- Take other prompt and effective steps, as appropriate, through the Director of Title IX and Equity Compliance to ensure that sex discrimination does not continue or recur within Mercy's Education Program or Activity.

The submission of appeal stays (or pauses) any sanctions for the pendency (or duration while the appeal is being deliberated and decided upon) of an appeal. Supportive measures and remote learning opportunities remain available during the pendency of the appeal.

If a Party appeals, Mercy will as soon as practicable notify the other Party in writing of the appeal, however the time for appeal shall be offered equitably to all Parties and shall not be extended for any Party solely because the other Party filed an appeal.

Appeals will be decided by Mercy's Title IX and Equity Appeals Panel, who will be free from bias or conflict. The outcome of the appeal will be provided in writing simultaneously to both Parties and include rationale for the decision. The Appeals Panel will make a recommendation to the University President regarding whether the dismissal or determination shall be sustained or not. The President's determination on the matter shall be final.

J. Informal Resolution

1. Procedures for Entering and Exiting Informal Resolution Process

At any time prior to determining whether discrimination or harassment occurred under this Grievance Procedure, including prior to making a complaint, Parties may instead seek Mercy's assistance to resolve allegations of sex-based harassment, and may elect to enter the informal resolution process. ***Under no circumstance will Parties be permitted to informally resolve matters involving allegations of sexual assault involving penetration, or alleged employee-on-student sex-based harassment or sexual violence.***

- The Parties may voluntarily elect to enter Mercy's informal resolution process at any time through an informed written consent. This informed written consent will include all terms of the elected informal process, including a statement that any agreement reached through the process is binding on the Parties.
- No Party may be required to participate in informal resolution, and Mercy may never condition enrollment, employment, or enjoyment of any other right or privilege upon

agreeing to informal resolution.

- The Parties may elect to leave the informal resolution process at any point until the informal resolution process is concluded. If a Party elects to leave the informal resolution process, the Grievance Procedure that the Parties paused will continue. In participating in the informal resolution process, the Parties understand that the timeframes governing the Grievance Procedure will temporarily cease, and only reinstate upon reentry into the Grievance Procedure.
- Supportive Measures will be available, or continue to be available if already provided, during an informal resolution process, if elected to proceed. The Director of Title IX and Equity Compliance will also, to the extent necessary, take other appropriate prompt and effective steps to ensure that discrimination or harassment does not continue or recur within Mercy's Education Program or Activity.

2. Notice Prior to Entry into Informal Resolution Process

Before the initiation of an informal resolution process, the Director of Title IX and Equity Compliance must provide to the Parties a written notice that explains:

- The allegations;
- The requirements of the informal resolution process;
- That, prior to agreeing to a resolution, any Party has the right to withdraw from the informal resolution process and to initiate or resume Mercy's Grievance Procedures;
- That the Parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the Parties from initiating or resuming Mercy's Grievance Procedures arising from the same allegations;
- The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the Parties; and
- What information Mercy will maintain and whether and how Mercy could disclose such information for use in its Grievance Procedures if they are initiated or resumed.

3. Determination to Approve Entry into Informal Resolution Process

Even where the Parties agree to submit a matter to informal resolution, the Director of Title IX and Equity Compliance must approve the decision to move the matter to the informal resolution process and may determine that informal resolution is not appropriate under the circumstances.

Factors that the Director of Title IX and Equity Compliance or their designee may weigh in considering the appropriateness of the informal resolution process include, but are not limited to, the gravity of the allegations, whether there is an ongoing threat of harm or safety to the campus, whether the Respondent is a repeat offender, whether the alleged conduct would present a future

risk of harm to others, and whether the Parties are participating in good faith. This determination is not subject to appeal.

At any time after the commencement of the informal resolution process, the Director of Title IX and Equity Compliance or their designee may determine that the informal resolution process is not an appropriate method for resolving the matter, and may require that the matter be resolved through the Grievance Procedures. This determination is not subject to appeal.

If informal resolution is approved or denied, Mercy will provide the outcome in writing simultaneously to the Parties. If informal resolution is approved, the Director of Title IX and Equity Compliance shall also provide the information of the facilitator in writing to the Parties in a reasonable timeframe once the facilitator is assigned.

4. Role of the Facilitator

Informal resolution processes are managed by trained facilitators. All facilitators must not be the same person as the investigator or the/a decisionmaker(s) in Mercy's Grievance Procedures. Any person designated to facilitate informal resolution must not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. The Director of Title IX and Equity Compliance may serve as the facilitator, subject to these restrictions (though not in circumstances when they serve as the investigator).

All facilitators must have specialized training, required by law and regulation. Such training includes:

- Mercy's obligation to address discrimination, including discriminatory and sex-based harassment, in its Education Program or Activity;
- The scope of conduct that constitutes discrimination, including discriminatory and sex-based harassment, including their definitions;
- All applicable notification and information requirements related to parental, family, or marital status, including pregnancy and related conditions, and Mercy's response to sex discrimination;
- The rules and practices associated with Mercy's informal resolution process; and
- How to serve impartially, including by avoiding conflicts of interest and bias.

5. Contents of Informal Resolution Agreements

Potential terms that may be included in an informal resolution agreement between the Parties include but are not limited to:

- Restrictions on contact; and
- Restrictions on the Respondent's participation in one or more of Mercy's education programs or activities or attendance at specific events, including restrictions Mercy could have imposed as remedies or disciplinary sanctions had Mercy determined at the

conclusion of the Grievance Procedures that discrimination or harassment.

6. *Breach of Informal Resolution Agreements*

If a Party breaches the resolution or if Mercy has other compelling reasons, such as if it learns of any fraud by a Party in entering into the agreement, Mercy may void the agreement and initiate or resume the Grievance Procedures.

7. *Confidentiality:*

In entering the informal resolution process, the Parties agree that any testimony and evidence (including admissions of responsibility) they share or receive during the informal resolution process concerning the allegations of the complaint are confidential while the Parties participate in the informal resolution process. No evidence concerning the allegations obtained within the informal resolution process may be disseminated to any person, provided that any Party to the informal resolution process may generally discuss the allegations under investigation with a parent, friend, advisor, or other source of emotional support, or with an advocacy organization. Should the Parties withdraw from the informal resolution process, information disclosed or obtained for purposes of the informal resolution process may be incorporated into the Grievance Procedures, provided that this information is disclosed and reviewed by the Parties under Mercy's Grievance Procedures.

8. *Informal Resolution Options*

Mercy offers the following informal resolution procedures for addressing complaints of sex-based harassment or sexual violence described under this Grievance Procedures:

d. Administrative Resolution

Should the Parties mutually determine to enter the informal resolution process, and the Respondent elects to accept responsibility for the allegations of the complaint at any point during the informal resolution process, the institution may administratively resolve the complaint. Where the Respondent admits responsibility, the Parties will receive simultaneous written notification of the acceptance of responsibility, and the Title IX and Equity Appeal Panel will convene to determine the Respondent's sanction and other remedies, as appropriate and consistent with institutional policy. The Parties will be given an opportunity to be heard at the sanctions hearing, including without limitation, the submission of impact statements. The Parties may be accompanied by their Advisor, but questioning of Parties or witnesses will not be permitted. The Parties will receive simultaneous written notification of the decision regarding sanctions and Remedies, which may be appealed according to the process described in these Grievance Procedures.

e. Mediation

The purpose of mediation is for the Parties who are in conflict to identify the implications of a student's actions and, with the assistance of a trained facilitator, identify points of agreement and appropriate Remedies to address them. Either Party can request mediation to seek resolution; mediation will be used only with the consent of both Parties, who will be asked not to contact one another during the process. The Director of Title IX will also review any request for mediation, and may decline to mediate based on the facts and circumstances of the particular case. Either Party has the right to terminate the mediation process and choose or resume another option for resolution at any time.

The mediation process will typically commence within ten (10) days after the Title IX Office receives consent to mediate from both Parties and has made its determination to allow informal resolution to go forward. Mediation will continue until concluded or terminated by either Party, the facilitator, or the Title IX Office. During mediation, any potential investigation will halt, and calculations for time frames will be stayed. If the mediation results in a resolution, the disciplinary process will be concluded, and the matter will be closed. If a resolution cannot be reached, the matter will be referred to the Associate Dean for Student Affairs to re-evaluate other options for resolution, including investigation or proceeding forward with the Grievance Procedures.

During mediation, a facilitator will guide a discussion between the Parties. In circumstances where the Parties do not wish to meet face to face, either Party can request "caucus" mediation, and the facilitator will conduct separate meetings. Whether or not the Parties agree to meet face to face, each Party will be permitted to bring an advisor of their choice to any meetings who may be, but is not required to be, an attorney.

At the conclusion of the mediation, the facilitator will memorialize the agreement that was reached between the Parties. The Director of Title IX will monitor adherence to the proposed solution and close the matter when compliance is satisfactory.

f. Restorative Justice

A restorative justice ("RJ") Conference is a dialogue, facilitated by an informal resolution facilitator with appropriate training,⁷ intended to restore relationships and repair harm after a conflict has occurred. Both the responsible Party and the individuals affected by the conflict come together to identify what harm was caused and, collaboratively, determine how conflict and trust might be, respectively, resolved and repaired.

A Party may request to engage in RJ at any stage of the disciplinary process, however, restorative justice may not be an appropriate mechanism for all conflicts. To qualify for RJ, the student accused of wrongdoing must accept responsibility and express remorse for the harm that was caused. The harmed Party must also be willing to accept an apology offered by the student accused

⁷ This option is subject to Mercy's ability to secure an appropriately trained facilitator.

of wrongdoing. Additionally, all involved Parties must agree to and abide by measurable and timely actions within the scope of this Policy and directives. The Director of Title IX will review any request for RJ, and may decline to initiate RJ based on the facts and circumstances of the particular case.

The RJ Conference proceeds only if all Parties agree to participate willingly. Upon doing so, the RJ process typically commences within ten (10) days after the Title IX Office receives written agreements from all involved Parties. The conference will continue until the conference is successfully concluded or until the Director of Title IX, in consultation with the facilitator, determines that the conference will not be successful. If successful, an agreeable resolution is reached by all involved Parties, at which time the process is concluded, and the matter is resolved. If a resolution cannot be reached, the matter will be referred to the Associate Dean of Student Affairs to re-evaluate other options for resolution.

The Director of Title IX will monitor the Parties' adherence to their proposed solution and reserves the right to close the matter when compliance is satisfactory.

IX. GENERAL PROVISIONS FOR ALL COMPLAINTS

A. Filing External Complaints

Individuals who feel that they have been subjected to discrimination or harassment have the right to avail themselves of any and all of their rights under law, including but not limited to filing complaints with one or more of the outside agencies listed below:

- U.S. Department of Education, Office for Civil Rights (students):
<http://www2.ed.gov/about/offices/list/ocr/complaintprocess.html>
https://www.eeoc.gov/federal/fed_employees/filing_complaint.cfm
- U.S. Equal Employment Opportunity Commission (employees):
<https://www.eeoc.gov/how-file-charge-employment-discrimination>
- The New York State Division of Human Rights (students and employees):
<https://dhr.ny.gov/complaint>
- The Westchester County Commission on Human Rights (students and employees):
<https://humanrights.westchestergov.com/file-a-complaint>
- The New York City Commission on Human Rights (students and employees):
<http://www1.nyc.gov/site/cchr/about/resources.page>

In certain circumstances, the University may close an investigation upon the filing of an external complaint. When this happens, the outside agency takes over the investigation and Mercy will cooperate with the investigation conducted by the outside agency. If Mercy closes an investigation for this reason, the Director of Title IX and Equity Compliance must notify the parties in writing.

B. Reporting and Other Actions by Bystanders

While many employees are required reporters pursuant to this Policy, Mercy University encourages all other employees, students and community members to report incidents of discrimination, sex-based harassment and sexual violence that they observe or become aware of to the Director of Title IX and Equity Compliance so that Mercy may take appropriate steps to eliminate the alleged discrimination and assist a complainant in obtaining the appropriate supportive measures they need. Bystanders who choose to exercise this positive moral obligation will be supported by the University and shall be protected from retaliation. Mercy also encourages bystanders who witness discrimination, sex-based harassment and sexual violence to take reasonable and prudent actions to prevent or stop the conduct. Actions may include direct intervention, calling law enforcement, or seeking assistance from a person in authority.

C. Reporting Retaliation

Any individual who believes he/she/they have been retaliated against for making a report under this Policy, assisting someone making a report, or participating in any manner in an investigation, hearing or resolution of a complaint under this Policy may file a complaint with the Director of Title IX and Equity Compliance. All retaliation complaints will be investigated in accordance with the investigation procedures set forth in this Policy, and individuals who are found to have engaged in retaliation will be subject to disciplinary action.

D. No Contact Orders

No Contact Orders are directives issued by the University prohibiting intentional contact or communication between specified parties. An individual who intentionally violates a No Contact Order is in violation of Mercy Policy and will be subject to disciplinary action. No Contact Orders may be issued for both complainants and respondents, as well as other individuals as appropriate. No Contact Orders are issued by the Vice President of Student Affairs or their designee (for students) and the Director of Human Resources or their designee (for employees). The mere granting of a no contact order is not a finding of fault by either Party.

E. Timing

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

F. False and Malicious Allegations

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

G. Recordkeeping

All records related to the Mercy's response to allegations of discrimination, sex-based harassment and sexual violence must be maintained for seven (7) years from the last action on a matter, unless such records must be maintained for a longer period of time pursuant to Mercy's Records Retention and Disposition Schedule.

These records include: records of any actions, including any supportive measures or accommodations taken in response to allegations of discrimination, sex-based harassment and sexual violence; investigation records, materials, and documents; determinations regarding responsibility and disciplinary sanctions; remedies provided to a complainant designed to restore or preserve equal access to Mercy's education program or activity; any appeals and the result; any informal resolution and the result; and any recordings or transcripts of hearings. Mercy's Records Retention and Disposition Schedule requires that student disciplinary records be maintained permanently.

X. UNIVERSITY OBLIGATIONS UNDER THIS POLICY

In addition to addressing allegations of discrimination, sex-based harassment and sexual violence, Mercy has the following obligations:

A. Dissemination of Policies, Procedures, and Notices

The Director of Title IX and Equity Compliance, in coordination with the Office of Student Affairs (including Residential Life and Health and Wellness), the Office of Campus Safety, the Office of the Provost, the Office of Human Resources and other appropriate offices, are responsible for the wide dissemination of the following: (i) this Policy; (ii) Mercy's Notice of Non-Discrimination; (iii) the Director of Title IX and Equity Compliance's name, phone number, office location, and email address and (iv) contact information for the Office of Campus Safety. Such dissemination includes posting the documents and information on the University website, and including it in residence life materials and training and educational materials.

The Students' Bill of Rights, which is incorporated into this Policy, must be distributed to any individual reporting an incident of sex-based harassment or sexual violence at the time the report is made. It must also be distributed annually to all students, made available on the University's website and posted in Mercy College residence halls.

B. Training and Educational Programming

Mercy is responsible for providing training to the Director of Title IX and Equity Compliance, investigators, Title IX and Equity Appeals Panel members, and anyone who facilitates informal resolutions.

The Director of Title IX and Equity Compliance, in coordination with other applicable offices, including Campus Safety, Office of Human Resources and Office of Student Affairs, is responsible for ensuring that the University provides training to University employees on their obligations under this Policy; provides education on this Policy and on sexual violence (including domestic violence, dating violence, stalking and sexual assault) to new and continuing students; and promotes awareness and prevention of discrimination, sex-based harassment and sexual violence among all students and employees. Specific required trainings include the following:

1. Training for Reporting and Confidential Employees

The University must provide training to all employees who are required to report incidents of discrimination, sex-based harassment and sexual violence under this Policy, as well as those employees who have been designated as confidential employees.

2. Training for Director of Title IX/Equity Compliance, Appeals Panel Members, Facilitators, and Other Relevant Employees

Mercy will provide training on the topics below to the Director of Title IX and Equity Compliance, investigators, and Appeals Panel members, and any person who facilitates an informal resolution process on an annual basis.

- a. The definition of Discrimination, Sex-Based Harassment, Sexual Assault, Dating Violence, Domestic Violence and Stalking;
- b. How to conduct an investigation;
- c. How to create an investigative report that fairly summarizes relevant evidence;
- d. The grievance process, including appeals and informal resolution processes, as applicable;
- e. Impartiality, including avoiding prejudgment of the facts, conflicts of interest, and bias;
- f. Relevance of questions and evidence, including the fact that sexual predisposition or prior sexual acts with individuals other than the parties are generally not relevant, the rights of the respondent, including the right to a presumption that the respondent is

"not responsible" until a determination regarding responsibility is made at the conclusion of the applicable processes;

- g. The scope of the University's education programs and activities;
- h. The effects of trauma; and
- i. Other relevant University policies and procedures.

3. Student Onboarding and Ongoing Education

The University shall adopt a comprehensive student onboarding and ongoing education campaign to educate students about discrimination, sex-based harassment and sexual violence, including domestic violence, dating violence, stalking, and sexual assault. During the student onboarding process, all new first-year and transfer students must receive training on this Policy and on a variety of topics relating to discrimination, sex-based harassment and sexual violence. In addition, the University shall offer and administer appropriate educational programming to residence hall students, athletes, and student leaders. The University must also provide such educational programming to any other student groups which the University determines could benefit from education in the area of discrimination, sex-based harassment and sexual violence. The University must also share information on domestic violence, dating violence, stalking and sexual assault prevention with parents of enrolling students. See <https://www.mercy.edu/about/title-ix>.

4. Campus Climate Assessments

Mercy must conduct, no less than every other year, a climate assessment to ascertain its students' general awareness and knowledge of Mercy's Policy and procedures regarding sexual violence, including but not limited to student experiences with and knowledge of reporting, investigation and disciplinary processes. The assessment instrument must include all topics required to be included under applicable law, including Section 129-B of the New York State Education Law.

Mercy will publish the results of the surveys on its Title IX web page. The published results will not contain any information which would enable a reader to identify any individual who responded to the climate assessment.

X. RULES REGARDING INTIMATE RELATIONSHIPS

A. Relationships Between Faculty or Employees and Students

Sexual activity, intimate or amorous or dating relationships ("intimate relationships"), even when apparently consensual, are inappropriate when they occur between an employee and any student for whom they have a professional responsibility. Those relationships are inappropriate because of the unequal power dynamic between students and faculty members and between students and employees who advise or evaluate them, such as athletic coaches or workplace supervisors. Such relationships necessarily involve issues of student vulnerability and have the potential for coercion. In addition, conflicts of interest or perceived conflicts of interest may arise when a faculty member

or employee is required to evaluate the work or make personnel or academic decisions with respect to a student with whom they are having an intimate relationship.

Therefore, faculty members and other employees are prohibited from engaging in intimate relationships with students for whom they have a professional responsibility, including undergraduates and graduate students.

For purposes of this Section, professional responsibility for a student means responsibility over any academic matters, including teaching, counseling, grading, advising for a formal project such as a thesis or research, evaluating, hiring, supervising, coaching, making decisions or recommendations that confer benefits such as admissions, registration, financial aid, other awards, remuneration, or fellowships, or performing any other function that might affect teaching, research, or other academic opportunities.

B. Relationships Between Supervisors and Employees

Many of the concerns about intimate relationships between employees and students also apply to relationships between supervisors and employees they supervise. Those relationships therefore are prohibited. Supervisors must disclose any such relationships to the Office of Human Resources in order to avoid or mitigate conflicts of interest in connection with the supervision and evaluation of the employees with whom they have an intimate relationship.

For purposes of this Section, supervising an employee means supervising in an employment setting, including hiring, evaluating, assigning work, or making decisions or recommendations that confer benefits such as promotions, raises or other remuneration, or performing any other function that might affect employment opportunities—even if the supervision is remote.

XI. IMPLEMENTATION

This Policy applies to discrimination, sex- based harassment and sexual violence that is alleged to have occurred on or after August 1, 2024. Such incidents alleged to have taken place before the effective date of this Policy will be handled in accordance with the *Mercy University Sexual Misconduct Policy* and the *Policy on Equal Opportunity and Non-Discrimination* that was in effect at the time the behavior occurred.

Should any portion of the 2024 Title IX Regulations be stayed or held invalid by a court of law, or should the Title IX Final Regulations be withdrawn or modified to not require the elements of this Policy, the invalidated elements of this Policy will be deemed revoked as of the publication date of the opinion or order.

APPENDIX A

BASIC REQUIREMENTS FOR GRIEVANCE PROCEDURES FOR ALL MATTERS UNDER THIS POLICY

As required by federal and state law, Mercy shall:

- Treat Complainants and Respondents **equitably**.
- Ensure that Mercy's Director of Title IX and Equity Compliance, investigator, decisionmaker or facilitator of an informal resolution process **does not have a conflict of interest or bias** for or against Complainants or Respondents generally or an individual Complainant or Respondent.
- Impose Grievance Procedures that include a **presumption that the Respondent is not responsible** for the alleged sex discrimination until a determination is made at the conclusion of the grievance procedures.
- Establish **reasonably prompt timeframes** for the major stages of this Grievance Procedure, including a process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the Parties that includes the reason for the delay.
- Ensure that reasonable steps to protect the **privacy** of the Parties and witnesses during the pendency of the Grievance Procedure are taken, provided that the steps do not restrict the abilities of the Parties to obtain and present evidence, including by speaking to witnesses (as long as such does not result in Retaliation), consult with their family members, confidential resources, or advisors, or otherwise prepare for or participate in this Grievance Procedure.
- Ensure an **objective evaluation** of all evidence that is Relevant and not otherwise impermissible under this Procedure, including both inculpatory and exculpatory evidence, and provide that credibility determinations must not be based on a person's status as a Complainant, Respondent or Witness.
- Exclude **impermissible evidence** from consideration as defined in the Grievance Procedure.
- Articulate **consistent principles** for how Mercy will determine which grievance procedure will apply under this Policy.
- Provide **notice of allegations** to the parties.
- Permit **dismissals** in certain circumstances so long as Mercy offers an appeal and, as appropriate, supportive measures, and takes other steps to ensure sex discrimination does not continue or recur.
- Permit **consolidation** of complaints in certain circumstances.
- Ensure the following **investigation requirements** are in place:
 - **The burden of proof is on Mercy** to gather sufficient evidence.

- There is **equal opportunity** for all parties to present fact witnesses and other inculpatory and exculpatory evidence that is relevant and not otherwise impermissible;
- A **determination** of what **evidence** is relevant and what evidence is impermissible;
- And **equal opportunity** for parties to **access relevant and not otherwise impermissible evidence** or an accurate description of this evidence—and if the recipient provides a description, the parties may request and then must receive access to the relevant and not otherwise impermissible evidence;
- Provide a **reasonable opportunity** for the parties to **respond to the evidence**;
- Offer **reasonable steps** to prevent and address the parties' **unauthorized disclosure of information** and evidence obtained solely through the grievance procedures;
- Prohibiting questions that are unclear or harassing of the party being questioned;
- Permitting a decisionmaker to weigh the credibility of a party or witness, including when a party or witness refuses to respond to relevant and permissible questions;
- Not permitting a decisionmaker to draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to relevant and permissible questions.
- Having a process that enables the decisionmaker to question parties and witnesses to adequately **assess a party's or witness's credibility** when credibility is in dispute and relevant.
- Having clear processes for the determination of whether sex discrimination occurred, including:
 - Determining whether sex discrimination occurred using the preponderance of the evidence standard of proof.
 - Notifying parties in writing of the determination whether sex discrimination occurred, including the rationale for such determination, and the procedures and permissible bases for the complainant and respondent to appeal, if applicable.
 - When there is a determination that sex discrimination occurred, requiring the Director of Title IX and Equity Compliance to coordinate the provision and implementation of remedies for the complainant or others whose access to the recipient's education program or activity has been limited or denied by sex discrimination, coordinate the imposition of any disciplinary sanctions on a respondent, and requiring the Director of Title IX and Equity Compliance to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the recipient's education program or activity.
 - Not imposing any **disciplinary sanctions** against a Respondent until the grievance procedures are completed.

- Not disciplining a party, witness, or other participant for making a **false statement** or for engaging in consensual sexual conduct based solely on the determination of whether sex discrimination occurred.
- Offer an **opportunity to appeal a dismissal or determination**.
- Provide the option for parties to participate in **informal resolution** processes.
- Allow the **decisionmaker to be the same person as the Director of Title IX/Equity Compliance or investigator**, as allowed by the 2024 Title IX Regulations; no inference or bias or conflict of interest can be drawn because the decisionmaker is the same person as the Director of Title IX/Equity Compliance or investigator in a case.

APPENDIX B

ADDITIONAL GRIEVANCE PROCEDURES FOR SEX-BASED HARASSMENT AND SEXUAL VIOLENCE MATTERS INVOLVING STUDENTS AS COMPLAINANT'S AND/OR RESPONDENTS

In addition to the basic requirements for grievance procedures set forth in Section VII above, Mercy must adhere to the following for complaints relating to student Complainants or Respondents in sex-based harassment and sexual violence matters:

- Providing **written notice** informing the parties of allegations, dismissals, delays, meetings, and proceedings.
- Provide **equal opportunity** to have an **advisor of the party's choice** at any meeting or proceeding.
- Provide **same opportunities**, if any, to have persons **other than the advisor** present at any meeting or proceeding.
- Provide **equal application** of any additional provisions to the parties.
- Allow for **reasonable extension of timeframes** on a case-by-case basis for good cause with written notice to the parties, including the reason for the delay.
- Allow **equal opportunity to access relevant and not otherwise impermissible evidence** or a written report summarizing the evidence—and if the institution provides access to an investigative report, the parties may request and then must receive access to the relevant and not otherwise impermissible evidence.
- Reasonable opportunity for the parties to **respond to the evidence**.
- Reasonable steps to prevent and address the parties' and their advisors' **unauthorized disclosure of information** and evidence obtained solely through the sex-based harassment grievance procedures.
- Have a process for **assessing credibility** when credibility is in dispute and relevant by: (1) allowing the investigator or decisionmaker to ask relevant and not otherwise impermissible questions during individual meetings with a party or witness; (2) allowing each party to propose relevant and not otherwise impermissible questions that the party wants asked of any party or witness and have those questions asked by the decisionmaker or investigator during individual meetings, including follow-up meetings; and (3) providing each party with an audio or audiovisual recording or transcript with enough time for the party to have a reasonable opportunity to propose follow-up questions;
- Prohibiting questions that are **unclear or harassing** of the party being questioned.
- Permitting a decisionmaker to **weigh the credibility of a party or witness, including when a party or witness refuses to respond to relevant and permissible questions**. Not permitting a decisionmaker to draw an inference about whether sex-based harassment occurred based solely on a party's or witness's **refusal to respond** to relevant and permissible questions.

- **Simultaneously providing written notice to the parties of the determination** that includes a description of the allegations, information about the policies and procedures used to evaluate the allegations, the decisionmaker's evaluation of the relevant and not otherwise impermissible evidence and determination whether sex-based harassment occurred, disciplinary sanctions and remedies if relevant, and information about appeal procedures.
- An opportunity to **appeal a dismissal or determination** based on procedural irregularity that would change the outcome, new evidence that would change the outcome and that was not reasonably available when the determination or dismissal was made, and conflict of interest or bias, as well as any other bases offered equally to the parties by the recipient.

Per **New York State Law**, Mercy is also required to additionally ensure that Complainants are advised of their right to:

- Notify University Campus Safety, local law enforcement, and/or state police;
- Have emergency access to the Director of Title IX/Equity Compliance or other appropriate official trained in interviewing victims of sexual assault who shall be available upon the first instance of disclosure by a Complainant to provide information regarding options to proceed, and, where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible, and detailing that the criminal justice process utilizes different standards of proof and evidence and that any questions about whether a specific incident violated New York Penal Law should be addressed to law enforcement or to the district attorney, who shall also explain whether he or she is authorized to offer the reporting individual confidentiality or privacy, and shall inform the Complainant of other reporting options;
- Disclose confidentially the incident to institution representatives, who may offer confidentiality pursuant to applicable laws and can assist in obtaining services for Complainants;
- Disclose confidentially the incident and obtain services from the state or local government;
- Disclose the incident to institution representatives who can offer privacy or confidentiality, as appropriate, and can assist in obtaining resources for reporting individuals;
- File a report of sexual assault, domestic violence, dating violence, and/or stalking and the right to consult the Title IX Coordinator and other appropriate institution representatives for information and assistance, ensure that Complainants know that reports shall be investigated in accordance with this Grievance Procedure and/or any other institutional policies that may be applicable, and ensure that a Complainant's identity will remain private at all times if said Complainant wishes to maintain privacy;
- Disclose, if the accused is an employee of Mercy, the incident to Mercy's Human Resources Department or the right to request that a confidential or private employee assist in reporting to the appropriate representative for the Human Resources Department, at

which point, such referral shall be handled according to the appropriate policies, procedures and/or Collective Bargaining Agreement related to employee complaints;

- Receive assistance from appropriate Mercy representatives in initiating legal proceedings in family court or civil court; and
- Withdraw a complaint or involvement from Mercy's Grievance Procedure at any time.

APPENDIX C

MERCY UNIVERSITY SEXUAL VIOLENCE RESOURCE LIST

EMERGENCY NUMBERS

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

CAMPUS SAFETY NON-EMERGENCY NUMBERS

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

CAMPUS SAFETY MAIN LOCATION

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

TITLE IX COORDINATOR

- (914) 674-7842
Verrazano Hall, Room 109
Dobbs Ferry Campus
titleix.equity@mercy.edu

ON-CAMPUS CONFIDENTIAL RESOURCES

Mercy University Health and Wellness Office

- Dobbs Ferry Campus, Main Hall 123
- Bronx Campus, Room 2125
- Manhattan Campus, Room 341
- Mental Health Counseling (914) 888-5150
- Colleen Powers, Director of Health & Wellness/Nurse Practitioner (914) 674-7707
- <https://www.mercy.edu/student-support/counseling-services>

SEXUAL ASSAULT FORENSIC EXAMINER (SAFE) HOSPITALS

Westchester County

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

The Bronx

- Jacobi Medical Center, 1400 Pelham Parkway, (718) 918-5000
- Lincoln Medical & Mental Health Center, 234 East 149th Street, (718) 579-5700
- North Central Bronx Hospital, 3424 Kossuth Avenue & 210th Street, (718) 519-3500

Manhattan

- Bellevue Hospital Center, 462 First Avenue, (212) 562-4132
- Harlem Hospital Center, 506 Lenox Avenue, (212) 939-1000
- Lenox Health Greenwich Village, 30 Seventh Avenue, (516) 465-8018

- Metropolitan Hospital Center, 1901 First Avenue, (212) 423-8993
- Mount Sinai Beth Israel, First Ave at 16th Street, (212) 420-2873
- Mount Sinai Hospital, One Gustave L. Levy Place, (212) 241-7005
- Mount Sinai Morningside, 1111 Amsterdam Avenue, (212) 523-4295
- New York-Pres. Hospital, Columbia Pres. Center, 622 West 168th Street, (212) 305-2500
- New York-Pres. Hospital, Weill Cornell Center, 525 East 68th Street, (212) 746-5454

Queens

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

Brooklyn

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

Staten Island

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

COMMUNITY RESOURCES

The following community resources offer confidential resources for victims of sexual assault, domestic violence, and other forms of sexual violence. Services include 24/7 hotlines; counseling; advocacy; legal assistance; shelter; medical care; HIV and STD screenings; and assistance working with local police, courts, and area hospitals.

WESTCHESTER

- **WestCOP – Victim Assistance Services**
Office: (914)345-3113
24/7 Hotline: (914) 345-311, Spanish available
24/7 Toll Free Hotline: (855) 827-2255, Spanish available
www.westcop.org
- **Hope’s Door**
Office: (914) 747-0818
24/7 Hotline: (888) 438-8700, Spanish available
www.HopesDoorNY.org
- **My Sister’s Place**
24/7 Hotline: (800) 298-7233, Spanish available
www.mspny.org
- **Putnam/Norther Westchester Women’s Resource Center**
4/7 Hotline: (845) 628-2166, Spanish available
www.pnwwrc.org
- **Westchester County Office for Women**
Office: (914) 995-5972, English
Office: (914) 995-2099, Spanish
After Hours: (914) 995-2099
Sexual Assault Hotline 24/7: (833) 220-2444

NEW YORK CITY

- **Bronx DA’s Office – Crime Victim’s Assistance Unit**

198 East 161st St. – Room 558 (Bronx)
Office: (718) 838-7309

- **Sexual Assault Treatment Program**
North Central Bronx Hospital
3424 Kossuth Avenue (Bronx)
(718) 519-2121
- **Mount Sinai Victim Support Services**
312 East 94th Street (Manhattan)
Office: (212)731-7546
24/7 Hotline: (212) 423-2140, Spanish available
- **The DOVE Program (Domestic & Other Violence Emergencies)**
New York Presbyterian
622 West 168th Street (Manhattan)
24/7 Hotline: (212) 305-9060, Spanish available
- **SAFE Center, Sexual Assault Response Team**
Bellevue Hospital Center
462 First Avenue (Manhattan)
(212) 562-3435
- **Rape Crisis & Violence Intervention**
Beth Israel Medical Center
317 East 17th Street (Manhattan)
(212) 420-4516

ADDITIONAL HOTLINES AND RESOURCES

- **NYC Antiviolence Project – LGBTQ**
24/7 Hotline: (212) 714-1141, Spanish available
- **The New York State Office for the Prevention of Domestic Violence** hotlines:
<http://www.opdv.ny.gov/help/dvhotlines.html>. Additional disclosure and assistance options that can be found and are presented in several languages can also be found here: <http://www.opdv.ny.gov/help/index.html> (or by calling 1-800-942-6906).
- **NYS Domestic Violence Hotlines**
24/7 Hotline: (800) 942-6906, multiple languages
24/7 Hotline: Deaf/Hard of Hearing (800) 799-7233 or 711
- **GLBTQ Domestic Violence Project:** <http://glbtqadv.org/>;
- **Legal Momentum:** <https://www.legalmomentum.org/>;
- **NYSCASA:** <https://nyscasa.org/responding>;
- **NYSCADV:** <http://www.nyscadv.org/>;
- **Pandora’s Project:** <http://www.pandys.org/lgbtsurvivors.html> **Rape, Abuse & Incest National Network (RAINN)**
24/7 Hotline: (800) 656-HOPE (4673), Spanish available
www.rainn.org
- **Safe Horizons Hotline**
24/7 Hotline: (800) 621-HOPE (4673), Spanish available
www.safehorizon.org

ADDITIONAL LEGAL ASSISTANCE

- **Pace Law School Women’s Justice Center** (914) 287-0739
- **Legal Services of Hudson Valley** (877) 574-8529
- **My Sister’s Place Legal Center** (914) 948-8466
- **Westchester Hispanic Coalition** (914) 948-8466
- **Empire Justice Center** (914) 422-4329
- **SurvJustice:** <http://survjustice.org/our-services/civil-rights-complaints/>

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

EXTERNAL AGENCIES TO FILE COMPLAINTS OF SEXUAL MISCONDUCT

- **Office for Civil Rights (OCR)**
 US Department of Education
 Main Office: (800) 421-3481
 Main Email: OCR@ed.gov
 New York Office: (646) 428-3800
 New York Email: OCR.NewYork@ed.gov
 New York Location: 32 Old Slip – 26th Floor, Manhattan
- **New York State Division of Human Rights**
 One Fordham Plaza – 4th Floor, Bronx
 Main Number, Toll Free: (888) 392-3644
 TTD/TTY Number: (718) 741-8300
 Email: info@dhr.ny.gov
- **New York City Commission on Human Rights**
 Phone: Call 311 or (212) 416-0197 for locations and services
- **United States Equal Opportunity Employment Commission (EEOC)**
 Main Number: (800) 669-4000
 TTY Number: (800) 669-6820
 New York office location: 33 Whitehall Street – 5th floor, Manhattan