



## **Sexual Misconduct Policy**

## **Table of Contents**

Page No.

<b>Section I – Policy and Process Summary .....</b>	<b>4</b>
<b>I. Sexual Misconduct Policy and Process Summary.....</b>	<b>4</b>
<b>II. Statement of Purpose.....</b>	<b>7</b>
<b>III. Notice of Non-Discrimination .....</b>	<b>7</b>
<b>IV. Scope of this Policy.....</b>	<b>8</b>
<b>V. Statement of Privacy and Confidentiality.....</b>	<b>8</b>
<b>VI. Terminology.....</b>	<b>9</b>
<b>VII. Prohibited Behavior: Definitions and Behavioral Examples of Sexual Violence, Sexual Harassment, and Other Gender-Based Offenses .....</b>	<b>13</b>
<b>Section – II: Sexual Misconduct Process .....</b>	<b>17</b>
<b>I. Title IX Officers.....</b>	<b>17</b>
<b>II. Obtaining Immediate Medical Attention and Emotional Support.....</b>	<b>17</b>
<b>III. Welfare of the Community (Amnesty) Policy .....</b>	<b>18</b>
<b>IV. Options for Reporting Sexual Misconduct.....</b>	<b>18</b>
<i>a. Confidential Resources .....</i>	<i>19</i>
<i>b. Anonymous Reporting .....</i>	<i>19</i>
<i>c. College Official/Responsible Employee or Campus Security Officer .....</i>	<i>20</i>
<i>d. Law Enforcement.....</i>	<i>20</i>
<i>e. Exception to Obligation to Investigate .....</i>	<i>21</i>
<b>V. Reporting Retaliation .....</b>	<b>21</b>
<b>VI. Initial Review.....</b>	<b>21</b>
<i>a. Jeanne Clery Act .....</i>	<i>22</i>
<i>b. Timely Warning.....</i>	<i>22</i>
<i>c. Interim Measures .....</i>	<i>22</i>

<b>VII.</b>	<b>Initial Assessment.....</b>	<b>23</b>
<b>VIII.</b>	<b>Formal Resolution Investigation .....</b>	<b>24</b>
<b>IX.</b>	<b>Disciplinary Actions (Students) .....</b>	<b>26</b>
<b>X.</b>	<b>Disciplinary Actions (Employees).....</b>	<b>26</b>
<b>XI.</b>	<b>Request for Appeal.....</b>	<b>27</b>
<b>XII.</b>	<b>Appeals Process .....</b>	<b>27</b>
<b>XIII.</b>	<b>Resolution Through Other Means .....</b>	<b>27</b>
	<b>Section III – Reporting and Monitoring .....</b>	<b>28</b>
<b>I.</b>	<b>Dispositions/Compliance Monitoring.....</b>	<b>28</b>
<b>II.</b>	<b>Records of Complaints/Reports.....</b>	<b>28</b>
<b>III.</b>	<b>Annual Reporting.....</b>	<b>29</b>
	<b>APPENDIX I: BEHAVIORAL EXAMPLES OF OTHER GENDER BASED OFFENSES.....</b>	<b>29</b>
	<b>SEXUAL HARASSMENT CASE STUDIES .....</b>	<b>30</b>
	<b>APPENDIX II: STUDENT BILL OF RIGHTS (Victim/Survivor/Reporter Bill of Rights)....</b>	<b>32</b>
	<b>APPENDIX III: RESPONDENT BILL OF RIGHTS .....</b>	<b>34</b>
	<b>INCIDENT REPORT FORM</b>	
	<b>ACKNOWLEDGEMENT OF RECEIPT</b>	

## **Section I – Policy and Process Summary**

### **I. Sexual Misconduct Policy and Process Summary**

The following is a summary of Maria College's Sexual Misconduct Policy and procedures. For more details, please refer to the College's detailed policies below:

- Maria College does not tolerate sexual misconduct of any nature and upon notification of possible misconduct, the College will promptly begin an investigation into allegations made against any of its current students or members of its faculty, staff, or college community.
- Maria College will not tolerate retaliation against anyone who raises a concern, or who reports misconduct. Efforts to prevent from anyone raising a concern, or from reporting misconduct in good faith, also will not be tolerated.
- At any point in the case management process, all parties have the right to pursue action through the court system. Any party choosing to pursue such action should contact an attorney and/or the Albany Police department.
- The Complainant and Respondent have the right to an advisor of their choice throughout the process. An advisor may be present at any hearing and informal meeting, and may participate only in an advisory capacity.
- All official communication correspondence from the Title IX Officers will be sent using the Maria College email addresses that have been provided to all faculty, staff, and students.

#### **Summary of Sexual Misconduct Process**

1. When sexual misconduct occurs or is suspected to have occurred on or off campus, the Complainant or Reporting Individual has several options, including:
  - a. Reporting the incident confidentially or non-confidentially to a Maria College resource:
    - i. Confidential Resources
      1. Maria College's Director of Counseling and Accessibility Services is the only confidential resource on campus who is not required to report any sexual misconduct or suspected misconduct to any other individual, without the express written permission of the person(s) making the report or as otherwise permitted by law.
    - ii. Non-Confidential Resources: Individuals who are required to file an Incident Report with the Title IX Coordinator:
      1. All Maria College employees, except those specified above; and
      2. Campus Security Officers.
  - b. Reporting the incident to the Albany Police Department
    - i. If the Police Department notifies the College of an allegation of sexual misconduct, an Incident Report will be completed and submitted to the Title IX Coordinator or Deputy Coordinator.
  - c. Completing an Incident Report form and submitting it to the College

- i. Incident Report Forms may be found in:
    - 1. Academic Affairs Office;
    - 2. Business Office;
    - 3. Campus Security Desks;
    - 4. Human Resources Office;
    - 5. Associate Vice President of Student Affairs Office;
    - 6. Title IX Coordinator or Deputy's Office; and
    - 7. College's Website.
  - ii. The Complainant or Reporting Individual may choose to remain anonymous or not.
- 2. If the incident is reported:
  - a. Incident Report form is completed and submitted.
  - b. Title IX Coordinator receives and reviews the Incident Report.
  - c. Timely warning may be issued notifying the campus community of a potential threat.
  - d. Temporary sanctions may be issued for the protection of those involved and the campus community.
  - e. Initial inquiry assessment is completed within 72 hours of the time the incident report was received by the Title IX Coordinator or his/her designee.
    - i. Title IX Officers complete an initial assessment into the incident. People who may be contacted and interviewed, include but are not limited to: Complainant, Respondent, Witnesses, and Reporting Individuals
    - ii. Initial assessment report is created by Title IX Coordinator or designee with initial recommendations.
    - iii. Title IX Coordinator and Deputy Coordinator review and discuss the recommendation(s) and determine the appropriate course of action. If the Title IX Officers disagree, the President of the College reviews the assessment report and recommendations and determines the appropriate course of action.
    - iv. Within 3 days, the Title IX Coordinator notifies the Complainant and Respondent of the course of action to be taken.
  - f. Informal Resolution – The Title IX Coordinator conducts an informal resolution meeting with the Respondent to discuss the initial decision. The Respondent may have an advisor present during this meeting.
    - i. If the Respondent confirms the allegations and acknowledges responsibility for his/her actions, the Title IX Coordinator and/or Deputy Coordinator, in consultation with the Complainant and other designated College officials, will determine the most appropriate course of action.
    - ii. Within 3 days of making that determination, the Title IX Coordinator notifies the Complainant and Respondent by Maria College email of the course of action to be taken.
    - iii. At any point during the informal resolution process, the Complainant,

Respondent, Title IX Coordinator or Deputy Coordinator may end the process and start the formal resolution process.

- iv. If either party disagrees with the decision and/or wants to initiate the formal resolution process, he/she must submit a written request for a formal investigation to the Title IX Coordinator within 5 days of notification of the decision.
- v. Should a formal investigation be initiated, the Title IX Coordinator may continue to enforce any previously implemented temporary sanctions or enact any new temporary sanctions for the duration of the investigation and adjudication process
- g. Formal Investigation
  - i. When a formal investigation is requested or required, the Title IX Team that completed the initial assessment will conduct a more thorough investigation. This investigation normally should be completed as soon as possible.
  - ii. At the conclusion of the investigation, the Title IX Coordinator or Deputy will complete a written investigation report. This report will include a resolution, including appropriate recommended sanctions if warranted.
  - iii. If a decision is not agreed upon by the Title IX Officers, the President of the College will review the resolution and make a decision.
  - iv. Within 5 days of a decision being rendered, the Title IX Coordinator or designee will notify the Complainant and Respondent of the decision and any applicable sanctions.
- h. Appeals
  - i. Should either the Complainant or Respondent disagree with the decision and want to appeal it, he/she must submit a written request for an Appeals Panel to the Office of the President within 5 days of receipt of the notification of the decision from the formal investigation.
  - ii. Upon receipt of official notification of a request for an Appeals Panel, the following will occur:
    - 1. The President will assemble the Appeals Panel.
    - 2. Title IX Coordinator or designee will notify the Complainant and Respondent of the receipt of a request for an Appeals Panel.
    - 3. If appropriate, the Title IX Coordinator or designee may continue to enforce any temporary sanctions or impose new temporary sanctions.
    - 4. The Appeals Panel will be convened within 5 to 10 days from receipt of the written request for an appeal to review and evaluate the appropriateness of the proposed sanctions. The Panel will decide either in favor of or against these sanctions, and its decision is final.
    - 5. Within 5 days of the Panel's decision, the Title IX Coordinator or designee will notify the Complainant and Respondent of the Panel's decision.

## **II. Statement of Purpose**

Maria College is committed to promoting a learning and working environment where sexual misconduct, which includes sexual violence, sexual harassment and other gender-based offenses is not tolerated. Accordingly, Maria College is committed to:

- defining conduct that constitutes sexual misconduct;
- providing clear guidelines for all members of our campus and visitors on how to report incidents of sexual misconduct;
- promptly responding to and investigating allegations of sexual misconduct, including taking steps to eliminate a hostile environment if one has been created and prevent the recurrence of future incidents of sexual misconduct;
- providing ongoing assistance and support to members of our campus who file complaints of sexual misconduct; and
- providing awareness and prevention information on sexual misconduct, including disseminating our policies, implementing training and educational programs for all College constituents.

This policy:

- outlines violations involving sexual and gender-based misconduct on campus, off campus, or while participating in study abroad or internships,
- identifies the rights, options, and resources of Complainants and Respondents in reported cases of sexual and gender-based misconduct, and
- describes actions individuals may take if they experience an incident of sexual and gender-based misconduct, or are accused of sexual and gender-based misconduct.

This policy prohibits sexual violence, sexual harassment, and other gender-based offenses in all College programs and activities. Conduct prohibited by this policy also may violate laws enforced through the criminal justice system. Individuals may decide to use this policy and the criminal justice system, simultaneously, to address covered conduct. Maria College proceedings that involve alleged violations of this policy will be conducted through a prompt and equitable process that provides adequate notice and a meaningful opportunity for all parties to be heard.

## **III. Notice of Non-Discrimination**

This policy addresses all forms of sexual and gender-based discrimination, including sexual assault and harassment. Maria College does not discriminate on the basis of sex in its educational, co-curricular or other programs or in the context of admissions or employment. Sex discrimination is prohibited by Title IX of the Education Amendments of 1972, a federal law that provides that:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

Maria College, as an educational community, will promptly and equitably respond to all reports of sexual and gender-based misconduct to eliminate the misconduct, prevent its recurrence, and address its effects on any individual or the community

#### **IV. Scope of this Policy**

All members of the Maria College community have an obligation to act responsibly in the realm of sexuality, gender, and relationships, to recognize and challenge any sexual and gender-based misconduct, and to adhere to College policies and local, state, and federal law. This policy applies to conduct occurring on Maria College property or at College-sanctioned events or programs that take place off campus, including study abroad and internship programs. This policy also applies to off-campus conduct that is likely to have a substantial adverse effect on any member of the Maria College community or Maria College.

This policy applies to all employees, applicants for employment, interns, whether paid or unpaid, contractors and persons conducting business, regardless of immigration status, with Maria College.

Sexual and gender-based misconduct can be committed by any member of the Maria College community, including students, staff, and faculty. The College has jurisdiction to take disciplinary action against a Respondent who is a current student or employee. There are specific policies and procedures for resolving a report of sexual or gender-based misconduct against a student, staff, or faculty Respondent:

- Complaints against a Maria College student or staff or faculty member will be resolved by the procedures set forth in this policy. As long as the College has jurisdiction over a student who is the Accused or Respondent, there is no time limit to invoking this policy in cases of alleged sexual and gender-based misconduct. Nevertheless, persons are encouraged to report alleged sexual or gender-based misconduct as soon as possible to maximize the College's ability to respond promptly and effectively.
- Complaints against a third party/individuals not affiliated with Maria College may not be able to be resolved through the College's process. The College's ability to take appropriate corrective action against a third party will be determined by the nature of the relationship between the third party and the College. Regardless, all support resources and interim measures are still available to the Reporting Individual and every effort will be made to assist the Reporting Individual in filing a complaint against the responding person through the appropriate channels (i.e. police, current workplace, current institution they attend, etc.).

#### **V. Statement of Privacy and Confidentiality**

All College employees (faculty, staff, administrators) except the Director of Counseling and Accessibility Services, the College's confidential resource, are responsible for addressing and immediately reporting actual or suspected discrimination, harassment, or sexual and gender-based misconduct to appropriate officials.



Maria College is committed to protecting the privacy of all individuals involved in a report under this policy. The College also is committed to providing assistance to help Reporting Individuals make informed choices. With any report under this policy, the College will make reasonable efforts to protect the privacy interests of the individuals involved in a manner consistent with the need for a careful assessment of the allegation and reasonable steps available to eliminate the reported conduct, prevent its recurrence, and address its effects.

Privacy and confidentiality have distinct meanings under this policy.

***Privacy:*** Privacy generally means that information related to a report of misconduct will be shared with a limited circle of individuals who “need to know” in order to assist in the active review, investigation, resolution of the report, and related issues. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process. Even College offices and employees who cannot guarantee confidentiality will maintain Reporting Individuals’ privacy to the greatest extent possible. The information provided to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator or designee to investigate and/or seek a resolution.

***Confidentiality:*** Confidentiality means that information shared by an individual with designated campus or community professionals cannot be revealed to any other individual without express permission of the individual, or as otherwise permitted by law. Campus and community professionals designated as such include medical providers, mental health providers, and ordained clergy, all of whom normally have privileged confidentiality that is recognized by the law. These individuals are prohibited from breaking confidentiality unless (i) given permission to do so by the person who disclosed the information; (ii) there is an imminent threat of harm to self or others; (iii) the conduct involves suspected abuse of a minor under the age of 18, or (iv) as otherwise required or permitted by law or court order.

***Non-Confidential/Not Private:*** Any other College employee who is not designated as a confidential resource under this policy is required to share a report of sexual and gender-based misconduct with the Title IX Coordinator or designee. The Title IX Coordinator or designee will conduct an initial assessment of the conduct, the Reporting Individual’s desired course of action, and the necessity for any interim remedies or accommodations to protect the safety of the Reporting Individual or the community. The goal is to eliminate any hostile environment. All College proceedings are conducted in compliance with the requirements of the Family Educational Rights and Privacy Act (FERPA), the Clery Act, Title IX, Violence Against Women Act (VAWA), New York’s Enough is Enough law, and other state and local laws, and College policy. No information shall be released from such proceedings except as required or permitted by law and College policy.

Inquiries or complaints about the application of Title IX may be directed to the College’s Title IX Coordinator or Deputy Coordinator and/or to the U.S. Department of Education’s Office for Civil Rights.

## **VI. Terminology**

Key terms used in this policy and their respective definitions are as follows:

***Accused:*** The “accused” is a person accused of a violation under this policy who has not yet

entered the College's conduct process.

**Advisor of Choice:** Both the Reporting Individual and Respondent may elect to be accompanied by an advisor of their choosing to any meetings, conferences, and interviews. The advisor's role is limited to observing and consulting with, and providing support to, the Reporting Individual or Respondent; an advisor may not speak on behalf of the Reporting Individual or Respondent. The Reporting Individual and Respondent have the right to consult with an attorney at their own expense. Attorneys may be present at any meetings, including any hearings; however, attorneys may not take part directly in the hearing itself and may serve only in an advisory capacity.

**Affirmative Consent:** Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

Consent will be determined with the following principles in mind:

- Consent to any sexual act or prior consensual activity between or with any party does not necessarily constitute consent to any other sexual act
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol
- Consent may be initially given but withdrawn at anytime
- Consent cannot be given when a person is incapacitated which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by lack of consciousness or being asleep, being involuntarily restrained, or if an 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.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm
- When consent is withdrawn or can no longer be given, sexual activity must stop.

**Appeals Panel:** Group of three individuals selected annually by the College's President to review any code of conduct decisions that have been appealed. The President of the College appoints the three members at the beginning of each academic year in consultation with designated campus committees/groups.

**Bystander:** A "bystander" is a person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of rules or policies of the College.

**Complainant / Survivor / Victim:** All individuals who have reported sexual misconduct will be referred to as "Complainants." For purposes of supporting and assisting Complainants, they will be referred to as "Survivors," or "Victims." There may also be instances where

the college serves as the Complainant (see Section XIII, “Formal Resolution Investigation” of this policy).

***Incapacitated:*** Incapacitation is a state where an individual cannot make an informed and rational decision to engage in sexual activity because they lack conscious knowledge of the nature of the act (i.e., lack an understanding of the who, what, when, where, why or how of the sexual interaction) and/or is physically helpless. An individual is incapacitated, and therefore unable to give consent, if they are asleep, unconscious, or otherwise unaware that sexual activity is occurring. The use of alcohol or other drugs does not, in and of itself, negate a person's ability to give consent, but a level of intoxication can be reached, short of losing consciousness, in which a person's judgment is so impaired that they become incapacitated and thus are not capable of giving consent.

The impact of alcohol and drugs varies from person to person, and evaluating incapacitation requires an assessment of how the consumption of alcohol and or drugs impact an individual's:

- Decision-making ability;
- Awareness of consequences;
- Ability to make informed judgments; or
- Capacity to appreciate the nature and the quality of the act.

Because the use of alcohol and other drugs can have a cumulative effect over time, a person who may not have been incapacitated at the beginning of sexual activity may become incapacitated and therefore unable to give effective consent as the sexual activity continues.

Evaluating incapacitation also requires an assessment of whether the accused or Respondent, or sober, reasonable person in that individual's position, knew or should have known, that the individual was incapacitated. If the person who wants to engage in sexual activity is too intoxicated to judge another's communications about consent, that person has an obligation to cease the activity. A person's responsibility for obtaining consent is not diminished by use of alcohol and or other drugs. Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual misconduct.

***Investigators:*** The individuals charged with investigating a complaint of sexual or gender-based misconduct. The investigators will be the Title IX Officers or designee(s), when warranted. Each Title IX Officer will receive annual training in strategies to protect parties who experience sexual misconduct to promote individual and institutional accountability.

***Reporting Individual:*** “Reporting Individual” shall encompass the terms Victim, Survivor Complainant, Claimant, Witness with Victim Status, and any other term used to reference an individual who brings forth a report of a sexual misconduct violation.

A Reporting Individual is usually an individual filing a complaint of a violation of this

policy. In some cases (e.g., cases in which a person involved in an incident of alleged sexual and/or gender-based misconduct does not wish to participate in the process but the College decides that the alleged misconduct needs to be investigated), Maria Collegemay serve as the Reporting Individual. In these cases, the College may extend the full rights of the Reporting Individual as defined in this policy to affected parties as deemed appropriate by the Title IX Coordinator or designee.

**Respondent:** A “Respondent” is a person accused of a violation under this policy who has entered the College’s conduct process.

**Sexual Activity:** “Sexual Activity” shall have the same meaning as “sexual act” and “sexual contact” as defined below:

“Sexual act” means—

- (A) 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;
- (B) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
- (C) 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
- (D) ) 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.

“Sexual contact” means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

**Title IX Officers:** The Title IX Officers consists of a Coordinator and 2 Deputy Coordinators who are responsible for Title IX Compliance efforts, which include but are not limited to:

- 1) notification and education;
- 2) consultation, investigation, and disposition;
- 3) institutional monitoring and compliance assurance; and
- 4) advising College President and other College officials.

**Witness:** A Witness is an individual who has knowledge of facts that may be relevant to the resolution of an allegation, and includes any person or bystander who observes a crime, impending crime, conflict, potentially violent behavior, or conduct that is in violation of Maria College’s Sexual and Gender-Based Misconduct policy. Witnesses must have observed the conduct in question or have information directly relevant to the incident (i.e. first told, etc.) and cannot be called solely to speak about an individual’s character.

## **VII. Prohibited Behavior: Definitions and Behavioral Examples of Sexual Violence, Sexual Harassment, and Other Gender-Based Offenses**

### ***Sexual Violence***

*Sexual violence* acts are physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent for reasons such as, but not limited to, the Victim's/Survivor's age, use of drugs or alcohol or inability to give consent due to intellectual or other disability. These acts include rape, sexual assault, sexual battery and sexual coercion.

*Sexual assault* is an offense that meets the definition of rape, fondling, incest, or statutory rape as stated in the uniform crime reporting system of the Federal Bureau of Investigation.

*Sexual coercion* is the act of using force, threats, alcohol or drugs and/or using physical, emotional or verbal pressure to have sexual contact with someone against his or her will or where a person is incapable of giving consent for reasons including, but not limited to, the victim/survivor's age, the victim/survivor's use of drugs or alcohol or the victim's inability to give consent due to intellectual or other disability.

*Sexual contact* includes kissing, patting, fondling, oral sex, genital touching, and any other sexual behavior that makes the victim/survivor feel uncomfortable.

*Sexual exploitation* occurs when a person takes non-consensual or abusive sexual advantage of another to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute another form of sexual misconduct. Examples of sexual exploitation include, but are not limited to, prostitution, non-consensual video or audio-taping of sexual or other private activity, exceeding the boundaries of consent (e.g., permitting others to hide in a closet and observe consensual sexual activity, videotaping of a person using a bathroom), engaging in voyeurism, or engaging in consensual sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted disease (STD) and without informing the other person of such infection.

### ***Sexual Harassment***

*Sexual harassment* is any unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and or other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment occurs when any of the following conditions are present:

- Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, evaluation of academic work, or participation in any aspect of a college program or activity;
- Submission to or rejection of such conduct by an individual is used as the basis for decisions affecting the individual;
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance, e.g. it is sufficiently serious, pervasive or persistent as to

create an intimidating, hostile, humiliating, demeaning, or sexually offensive working, academic, residential, or social environment under both the subjective perspective of the person who experiences such conduct and objective standard of a reasonable person's perception of such conduct.

A single isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to establish the existence of a hostile environment, particularly if the harassment is physical. Conduct which is pervasive or persistent, even if not severe, may also create a hostile environment.

Sexual Harassment also includes acts of verbal, non-verbal or physical aggression, intimidation or hostility based on gender or sex-stereotyping, even if those acts do not involve conduct of a sexual nature.

*Sexual harassment:*

- May be blatant and involve an overt action, a threat or reprisal, or may be subtle and indirect, with a coercive aspect that is unstated.
- May or may not include intent to harm, be directed at a specific target, or involve repeated incidents.
- May be committed by anyone, regardless of gender, age, position or authority. While there is often a power differential between two persons, perhaps due to differences in age, social, educational or employment relationships, harassment can occur in any context.
- May be committed by a stranger, an acquaintance, or someone with whom the Reporting Party has an intimate or sexual relationship.
- May be committed by or against an individual or group.
- May occur by or against an individual of any sex, gender identity, gender expression or sexual orientation.
- May occur in the classroom, in the workplace, in athletic facilities, in residential settings, or in any other setting.
- May be a one-time event or part of a pattern of behavior.
- May be committed in the presence of others, when the parties are alone, or through the use of technology.
- May affect the Reporting Party and or third parties who witness or observe harassment and are affected by it.

Examples of conduct that may constitute sexual harassment as defined above may include a severe, persistent or pervasive pattern of unwelcome conduct that includes one or more of the following:

*Physical conduct:*

- Unwelcome touching, sexual/physical assault, impeding, restraining, or blocking movements.
- Unwanted sexual advances.

*Verbal conduct:*

- Making or using derogatory comments, epithets, slurs or humor.
- Intentionally using incorrect pronouns or an incorrect name when a person has clearly

stated their preferred name and pronouns.

- Verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes or invitations.
- Objectively offensive comments of a sexual nature, including persistent or pervasive sexually explicit statements, questions, jokes, or anecdotes.

Visual conduct:

- Leering, making sexual gestures, displaying of suggestive or demeaning objects or pictures, cartoon or posters in a public space or forum.
- Severe, persistent, or pervasive visual displays of suggestive, erotic, or degrading images. This example should not be understood to constrain academic freedom in teaching, research, or creative activity, or to limit intellectual and or expressive rights.
- Letters, notes or electronic communications containing comments, words, or images described above.

Quid pro quo conduct:

- Direct propositions of a sexual nature between those for whom a power imbalance or supervisory or other authority relationship exists.
- Offering educational or employment benefits in exchange for sexual favors.
- Making submission to sexual advances an actual or implied condition of employment, work status, promotion, grades, or letters of recommendation, including subtle pressure for sexual activity, an element of which may be repeated requests for private meetings with no academic or work purpose.
- Making or threatening reprisals after a negative response to sexual advances.

### ***Consensual Relationships***

Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.

Sexual relationships between faculty and staff members and students are fraught with the potential for exploitation. The respect and trust accorded a faculty member by a student, as well as the actual or apparent authority of the faculty member, make voluntary consent by the student suspect. Even when both parties have in fact consented, the development of a sexual relationship renders both the faculty member and the College vulnerable to subsequent allegations of harassment.

*Policy on Consensual Sexual Relationships with Current Students:* Sexual relationships, whether consensual or not, between College employees and their students (those whom they currently teach, advise, supervise, coach, evaluate, or hold authority over in any way) violate the integrity of the College's educational community and constitute grounds for disciplinary action up to and including separation from the College.

*Policy on Consensual Sexual Relationships with Students When There Is No Formal Authority over the Student:* Even if a College employee does not currently hold a position of authority over a student, any sexual relationship between an employee and a student of

the College potentially jeopardizes the integrity of the academic environment of the Maria community. The College, therefore, discourages in the strongest possible terms any sexual relationship between an employee and any student of the College. In the event that any such relationship is found to undermine the trust, respect, and fairness that are essential to the success of Maria's educational mission, the College will take appropriate disciplinary action, up to and including separation from the College.

Where this prohibition is applicable, if charges of sexual harassment are made, it shall not be a defense to allege that the relationship was consensual in any proceeding brought under these procedures.

### ***Other Gender-Based Offenses***

*Dating violence* is violence committed by a person who (a) 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 these factors: length of the relationship, type of relationship, and frequency of interaction between the persons involved in the relationship.

*Domestic violence* is a felony or misdemeanor crime of violence committed by a current or former spouse of the victim/survivor, by a person with whom the victim/survivor shares a child in common, by a person who is cohabitating with or has cohabitated with the victim/survivor as a spouse, by a person similarly situated to a spouse of the victim/survivor under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim/survivor who is protected from the person's acts under the domestic violence laws of the jurisdiction.

*Stalking* is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.



## **Section – II: Sexual Misconduct Process**

### **I. Title IX Officers**

Students, faculty, staff, administrators and visitors at Maria College who experience any form of sexual misconduct on or off-campus (including Maria-sponsored trips and events) are strongly encouraged to immediately report the incident by contacting Maria College's Title IX Coordinator or Deputy Coordinator, local law enforcement, and/or by calling 911. Contact information for the Title IX Coordinator and Deputy Coordinator is as follows:

#### **Title IX Coordinator**

Andrew Ledoux  
Associate Vice President for Student Affairs, Associate Dean of Students  
Mercy Hall  
(518) 861-2505  
[TitleIX@mariacollege.edu](mailto:TitleIX@mariacollege.edu)

#### **Title IX Deputy Coordinators**

Jillian Mertzluft  
Assistant Director of Student Support and Mission  
Mercy Hall  
(518) 861-2571  
[TitleIXDeputy@mariacollege.edu](mailto:TitleIXDeputy@mariacollege.edu)

Rosa Lyn Vazquez  
Human Resources Manager  
Main Building (518) 861-2580  
[TitleIXDeputy@mariacollege.edu](mailto:TitleIXDeputy@mariacollege.edu)

***Notifications from Title IX Officers:*** All official notifications, correspondence, and updates from the Title IX Team will be sent through the designated Maria College email address of the appropriate parties.

### **II. Obtaining Immediate Medical Attention and Emotional Support**

Maria College is committed to assisting anyone who experiences sexual misconduct with seeking comprehensive medical attention as soon as possible to treat injuries, obtaining preventative treatment for sexually transmitted diseases, and preserving evidence, among other things. For rapes in particular, immediate treatment and preservation of evidence of the assault are important for many reasons, including facilitating a criminal investigation.

Maria maintains a list of resources, including rape crisis centers and domestic violence shelters, available throughout the Capital District. This list includes information about Albany Memorial Hospital, which is specially equipped to handle sexual misconduct and trained to gather evidence from such assaults. The Sexual Assault and Crime Victims Assistance Program at Memorial

Hospital provides medical exams to victims/survivors of sexual assault. As part of this program, an advocate is available to assist and support victims/survivors through the process through Albany County ([http://www.nehealth.com/Medical\\_Care/SAM/Sexual\\_Assault\\_Center/](http://www.nehealth.com/Medical_Care/SAM/Sexual_Assault_Center/)).

### ***On Campus Emotional Support***

Individuals who have experienced or witnessed sexual misconduct are encouraged to seek emotional support as soon as possible, either on or off campus. On-campus resources include the Counseling and Accessibility Services Coordinator, who is trained to provide crisis intervention:

Kim Noakes, M.S. Ed., MHC

Director of Counseling and Accessibility Services

Frank E. O'Brien, Jr. Student Support Center, Mercy Hall - (518) 861-2508

knoakes@mariacollege.edu

### **III. Welfare of the Community (Amnesty) Policy**

The health and safety of every student at Maria College is of utmost importance. Maria College 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.

Maria College strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to College 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 college officials or law enforcement will not be subject to Maria'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.

This policy may also be applied, but not limited to: alcohol or drug related incidents, cases of sexual misconduct or situations of vandalism and damage. The policy only applies to the College's Student Code of Conduct and has no status in other jurisdictions such as local or state courts.

### **IV. Options for Reporting Sexual Misconduct**

All students and employees have the right to make a report to campus security, local law enforcement, and/or state police or choose not to report; to report your incident to Maria College; to be protected by the college from retaliation for reporting an incident; and to receive assistance and resources from Maria College.

Victims/survivors and witnesses have many options that can be pursued simultaneously, including any of the following. If the reporting witness or complainant chooses to pursue action under this policy, s/he shall make a written statement (which can be either written on an incident report by the Complainant or dictated and ascribed to) regarding the sexual misconduct complaint.

A reporting Witness or Complainant may choose to withdraw a complaint and/or involvement from the College process at any time.

***a. Confidential Resources***

Confidentiality may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to college officials in a manner consistent with state and federal law, including but not limited to 20 U.S.C. 1092 (F) and 20 U.S.C. 1681 (A). Licensed mental health counselors, medical providers and pastoral counselors are examples of college employees who may offer confidentiality.

*At Maria College, the following is the list of Confidential Resources:*

Kim Noakes, M.S.Ed., MHC  
Director of Counseling and Accessibility Services  
Frank E. O'Brien, Jr. Student Support Center, Mercy Hall  
(518) 861-2508  
knoakes@mariacollege.edu

This is the only Maria College employee who can offer legally protected confidentiality. This individual is not required to report any information about an incident to the Title IX Coordinator without a Complainant's permission. While professional counselors will maintain an individual's confidentiality vis-à-vis the College, they may have reporting or other obligations under New York State law, e.g., mandatory reporting to law enforcement in case of minors, involving imminent harm to self or others.

An individual who speaks to a Confidential Resource must understand that, if the individual wants to maintain confidentiality, the College will be unable to conduct an investigation into particular incidents or pursue disciplinary action against the Accused.

The Confidential Resource may assist individuals in receiving other necessary protection and support, such as Survivor advocacy, academic support or accommodations for disability, health and mental health services, and/or changes in residence halls, working and course schedules in coordination with the Title IX Coordinator. The Confidential Resource may assist in obtaining services, from State or local governments.

Individuals who initially request confidentiality may later decide to file a complaint with the College and/or report the incident to Albany Police, and thus have the incident investigated. This counselor will provide the individual with assistance in contacting the Title IX Coordinator if the individual wishes to do so.

***b. Anonymous Reporting***

Claimants may anonymously disclose a crime or violation by completing the Incident Report. The report is located in various offices on campus or can be found online at <https://www.mariacollege.edu/Title-IX-Policy>. Individuals also may anonymously report sexual misconduct by calling this hotline: (518) 514-7050. The College has a duty to

investigate anonymous disclosures to the extent possible, based on the information disclosed. If a Complainant self-identifies but asks to remain anonymous during the investigation, the Title IX Coordinator will consider how to proceed, taking into account the Complainant's wishes, the College's commitment to provide a safe environment, and the Respondent's right to have specific notice of the allegations if the College were to take action that affects the Respondent.

***c. College Official/Responsible Employee or Campus Security Officer***

"Responsible Employees" have a duty to report incidents of sexual misconduct, including all relevant details, to the Title IX Coordinator. A "responsible" employee is a Maria College employee who has the authority to redress sexual misconduct, who has the duty to report incidents of sexual misconduct or who a student could reasonably believe has the authority or duty. Such employees are not permitted under any circumstances to maintain a Complainant's confidentiality.

Maria has designated all Faculty, Staff and Administrators, with the exception of any serving in a role as a confidential resource, as responsible employees.

Immediately upon learning of potential campus sexual misconduct, any employee with a duty to report violations of this policy who receives a complaint of sexual misconduct or who observes or learns of conduct that is reasonably believed to be in violation of this policy, is required to report the alleged conduct to the Title IX Coordinator and/or Public Safety who will take appropriate action to address the report.

A responsible employee must report to the Title IX Coordinator and/or Public Safety all relevant details about the alleged sexual misconduct shared by the Complainant and that the College will need to determine what happened, including the names of the Complainant and Accused, any Witnesses and any additional relevant information, including the date, time, and specific location of the alleged incident.

*Non-Confidential Resources & Privacy:* Privacy may be offered by an individual when such individual is unable to offer confidentiality under the law but shall still not disclose information learned from a Reporting Individual or bystander to a crime or incident more than necessary to comply with this and other applicable laws, including informing appropriate college officials.

Even college officers and employees who cannot guarantee confidentiality will maintain the Reporting Individual's privacy to the greatest extent possible. The information the Reporting Individual provides to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.

***d. Law Enforcement***

At any time the Complainant or Witness may file a report with local or state police. The Complainant or Witness may receive assistance from the College in initiating legal proceedings in family or civil court.

Sexual misconduct is prohibited, in separate ways, by New York State Law and Maria College policy. Thus, offenders may be prosecuted under New York State criminal statutes and subject to disciplinary action by the College.

The College may choose to pursue disciplinary action while criminal action is pending, or even if criminal justice authorities choose not to prosecute. The College will assist Complainants in contacting law enforcement and/or other appropriate authorities for the purpose of obtaining orders of protection or other similar relief available through the court system, and will, to the extent that it is able, facilitate the implementation of any on-campus or College program-related restrictions imposed by such orders.

In the case of reported sexual misconduct, a law enforcement investigation does not relieve the school of its independent obligation to investigate the report, as specified by Title IX of the Education Amendments of 1972 ("Title IX"). Maria College's investigative and conduct process will run concurrently with a criminal justice investigation and proceeding except for temporary delays as requested by external municipal entities while law enforcement gathers evidence. Temporary delays should not last more than ten (10) days except when law enforcement specifically requests and justifies a longer delay.

*e. Exception to Obligation to Investigate*

If an individual discloses information through a public awareness event such as candlelight vigils, protests, or other public event, the college is not obligated to begin an investigation based on such information. The college may use the information provided at such an event to inform efforts for additional education and prevention efforts.

**V. Reporting Retaliation**

Individuals may file a complaint with the Title IX Coordinator if they have been retaliated against for reporting sexual misconduct, assisting someone in making such a report, or participating in an investigation or resolution of a sexual misconduct complaint. All retaliation complaints will be investigated according to the investigation procedures set forth in this policy and individuals who have been found to have engaged in retaliation will be subject to disciplinary action.

**VI. Initial Review**

All reports and complaints of sexual misconduct should be filed with the Title IX Coordinator as an Incident Report, as soon as possible after the incident(s) occurred or in a timely manner. While Complainants are welcome to file a report or complaint at any time, Complainants are encouraged to come forward as soon as possible because a delay in reporting or making a complaint may impact the effectiveness of the investigation. Delays in reporting may impair the college's ability to investigate due to, but not limited to, fading memories and the availability of witnesses and evidence.

Upon initial review the Title IX Office may be required to post timely warnings throughout campus and any interim measures.

***a. Jeanne Clery Act***

Maria College will, in accordance with the Jeanne Clery Act, report all incidents of domestic violence, dating violence, stalking, and sexual assault. These statistics can be found in the College's Annual Security and Fire Safety Report. The report includes statistics for the previous three years concerning reported crimes and institutional policies addressing campus security. To obtain a copy of this report contact the Business Office, Main Building, room 100A.

***b. Timely Warning***

In the event a situation arises within the College's Clery geography that, in the judgment of the Title IX Coordinator or Deputy Coordinator (either of who may consult with the President, Vice President for Academic Administration or Senior Vice President of Mission and Institutional Advancement-Dean of Students) constitutes an on- going or continuing threat, a campus-wide "timely warning" will be issued.

The warning will be issued by the Title IX Coordinator or the Dean of Students' Office through an email to students, faculty, staff and administrators. In such instances, a copy of the notice will be posted in each on-campus building. Anyone with information warranting a timely warning should report the circumstance to a security officer, or Title IX Coordinator or Deputy Coordinator, by phone (518) 483-3111 or in person. If any situation is deemed to be an emergency, Maria College will use its mass notification system to warn the community of any threat.

Timely warning notices omit all information that identifies the Victim/Survivor.

***c. Interim Measures***

Upon receipt of a report, the Title IX Coordinator may provide reasonable and appropriate interim measures designed to preserve the Complainant's educational experience, the safety of all parties and the broader campus community, maintain the integrity of the investigative and/or resolution process, and deter retaliation. The Title IX Coordinator or designee may provide interim measures regardless of whether or not the Complainant seeks formal disciplinary action. The Title IX Coordinator or designee will work collaboratively with the Senior Vice President of Mission and Institutional Advancement-Dean of Students and the Vice President for Academic Administration in providing interim measures. Examples of such measures may include but not be limited to:

*No Contact Order:* The College's issuance of a "no contact order" whereby the Accused's or Respondent's continued intentional contact with the Reporting Individual is a violation of institution policy subject to additional conduct charges.

Under such an order, if the Accused and a Reporting Individual observe each other in a public place, it is the responsibility of the Accused to leave the area immediately and without contacting the Reporting Individual.

When such an order is in effect, both the Accused and Reporting Individual will be afforded a prompt review, reasonable under the circumstances, of the need for the terms of a no contact order. Each shall have the opportunity to submit

evidence in support of the request.

*Order of Protection:* Assistance from the College's security officers, if applicable, or other officials in obtaining an order of protection, or equivalent protective or restraining order.

To be provided a copy of the order of protection when such an order is received by the College, and have the opportunity to speak with the College's Title IX Coordinator or Deputy who can explain the order and answer any questions.

To be provided an explanation of the consequences of violating these orders, including but not limited to arrest, additional conduct charges, and interim suspension.

Assistance from the College to contact and assist local law enforcement in effecting an arrest for violating such an order.

*Interim Suspension:* When the Accused is a student determined to present a continuing threat to the health and safety of the community, to subject the Accused to interim suspension pending the outcome of the Sexual Misconduct process.

When the Accused is not a student but is a member of the Maria College community and presents a continuing threat to the health and safety of the community, to subject the Accused to either a paid or unpaid leave of absence according to the College's employment policies.

Additional interim measures or reasonable accommodations may include, but are not limited to:

- Access to counseling services and assistance in arranging an initial appointment.
- Rescheduling of exams and assignments.
- Change in class schedule.
- Change in work schedule or job assignment.
- Change in housing.
- Arranging for medical services.
- Providing the Complainant assistance with filing a criminal complaint and seeking an order of protection.
- Other remedies that can be used to achieve the goals of this policy, i.e. interim suspension or campus restriction pending the outcome of the investigation /process.

## **VII. Initial Assessment**

Upon receipt of a report of alleged sexual misconduct, the College's Title IX Coordinator, Deputy Coordinator, or designee(s) will conduct an initial assessment within 72 hours. The goal of this assessment is to provide an integrated and coordinated response to reports of sexual misconduct. In the majority of cases, the initial assessment will be limited to two investigators who have received training on this policy and procedures for conducting Title IX investigations.

At the conclusion of the initial assessment, the Title IX Officers or designees will promptly

write a summary report of their findings, and recommendations for resolution, including any sanctions which may be warranted. The Title IX Coordinator and Deputy Coordinator will review and discuss the written report, and determine the appropriate course of action. If the Title IX Officers disagree, the President of the College will review the Title IX Officers' report and determine the appropriate course of action.

### ***Informal Resolution***

If an informal resolution is determined to be the appropriate course of action, the Title IX Coordinator or Deputy Coordinator will meet with the Respondent to review the results of the initial investigation. Informal resolution may include negotiation, shuttle diplomacy, mediation or restorative justice. Negotiation, shuttle diplomacy and mediation will not be used in cases that involve sexual misconduct or any other form of violence.

If the Respondent confirms the allegations and acknowledges responsibility for his/her actions, the Title IX Coordinator and/or Deputy Coordinator, in consultation with the Complainant and other designated College officials, will determine the most appropriate course of action. Within 3 days of making that determination, the Title IX Coordinator will notify the Complainant and Respondent of the course of action to be taken.

At any point in the informal resolution process, the Complainant, Respondent, or Title IX Coordinator or Deputy Coordinator may end the process and start the formal resolution process.

### ***Notification***

At the conclusion of the initial investigation and/or informal resolution, the Title IX Coordinator or designee will issue the Respondent a notice of the complaint describing the date, time location, allegations, the specific policy violation(s) alleged, and any imposed sanctions. Once presented with the notice, the Respondent has five (5) business days to formally, in writing, accept or deny responsibility for the alleged behavior. Failure to respond by the deadline will be treated as acceptance of responsibility and any imposed sanctions.

If a determined course of action is not agreed upon through an informal resolution process, the formal resolution process is initiated.

## **VIII. Formal Resolution Investigation**

Formal resolution begins with an investigation. The investigation will be conducted by the investigators that conducted the initial inquiry, and the investigation generally will be completed within thirty (30) calendar days, absent any extenuating circumstances. In certain circumstances, investigation time frames may need to be extended (e.g., in June, July and August, when some faculty members are not available; when there are a significant number of witnesses to interview; when a complaint includes multiple allegations). However, every effort will be made to resolve cases as expeditiously as possible.

The Title IX Coordinator, or designee, will periodically notify the complainant and respondent of the status of the formal resolution investigation.



Considering the best interest of the College community, the College may proceed with an investigation without the consent from the potential Complainant, but will, to the extent practicable under the circumstances, maintain the privacy and anonymity of the potential Complainant.

The goal of the investigation is to gather all relevant facts and determine if there is sufficient information to determine responsibility and impose disciplinary sanctions if appropriate. The preponderance of evidence or “more likely than not” standard of review will be used during the investigatory process.

During the formal resolution investigation, the Title IX Coordinator may continue to implement any appropriate interim measures.

### ***Advisors***

Complainants and Respondents may use an advisor of their choice (including legal counsel) at each point in the formal resolution process. The advisor may serve only in an advisory role and may not directly represent either party.

### ***Investigation Report***

Within five (5) days of completing the investigation, absent extenuating circumstances, the Title IX Coordinator, Deputy Coordinator or designee will prepare a written report and submit it to the Title IX Office. The report, at a minimum, will include a summary of:

1. The complaint;
2. The Respondent’s response to the complaint;
3. The statements and evidence obtained during the investigation; and
4. Prior settlements or substantiated complaints against the Respondent.

Respondents have the right to exclude their own prior sexual history with persons other than the other party in the case, and/or their own mental health diagnosis and/or treatment from admittance in the process to determine responsibility. However, in determining sanctions, if any, the Title IX Officers may consider any past findings of the respondent’s domestic violence, dating violence, stalking, or sexual assault.

The Title IX Officers determine the Respondent’s responsibility, if any, for the alleged violation based on a “preponderance of the evidence” standard. A preponderance of the evidence exists when a reasonable person, after a careful balancing of available information, would conclude that “more likely than not” a violation has occurred and the person charged is responsible for the violation.

The Title IX Officers normally will render a finding based on unanimous agreement. In instances where unanimity is not achieved, the President of the College will provide a deciding vote. Sanctions determined and imposed, if any, may include but not be limited to any of those specified below under the “Disciplinary Actions” sections for students and employees, respectively.

### ***Formal Investigation Outcome Notifications***

The Title IX Coordinator will notify the Complainant and Respondent, simultaneously and in writing, of the decision. Any sanction(s) determined in its decision will be considered final six (6) business days after the date this written notice is sent to the parties, unless the President of the College receives a formal, written appeal from the Complainant or Respondent. Failure to submit the appeal within five (5) business days waives the right of written appeal.

Following the notification of the decision from the Title IX Officers, the Complainant and/or Respondent may provide an additional written response to be included in the case materials.

### **IX. Disciplinary Actions (Students)**

Sanctions administered to student respondents may include but not limited to:

- A. Dismissal of any action against the student and clearing of his/her name.
- B. Verbal Warning: A discussion about the incident with the student, with no written follow-up or notification.
- C. Written Warning: A written notice to the student notifying him/her that his/her conduct is in violation of college regulations and the continuation of said conduct for a stated period of time may be cause for more serious disciplinary action.
- D. Community Service: A stated number of hours of donated service commensurate to the founded violation.
- E. Revocation of college admission.
- F. Mandated behavioral or substance abuse assessment.
- G. Disciplinary Probation: A stated trial period of time, set in writing, during which the student is expected to demonstrate appropriate conduct as a member of the College Community.
- H. Disciplinary Suspension: A stated period of time, not to exceed one academic year, when the student is excluded from classes or activities, following which:
  - 1. The student must follow specifically-outlined procedures for readmission to the College or activities; and
  - 2. Upon return to the College, the student will be on disciplinary probation for the rest of his/her enrollment at the College, during which time any violation of the student code of conduct may result in disciplinary dismissal from the College.
- I. Disciplinary Dismissal from the College: Permanent termination of status as a student of the College.

### **X. Disciplinary Actions (Employees)**

Sanctions administered to employee respondents may include but not limited to:

- A. Dismissal of any action against the employee and clearing of his/her name.
- B. Verbal Warning: A discussion about the incident with the employee, with no written follow-up or notification.
- C. Written Warning: A written notice to the employee notifying him/her that his/her

conduct is in violation of College regulations and the continuation of said conduct for a stated period of time may be cause for more serious disciplinary action.

- D. Mandated participation in counseling or individualized training.
- E. Prohibition from participating in grading, honors, and recommendations.
- F. Re-review of reappointment and/or promotion decisions, or other performance evaluations.
- G. Restriction of the employee's access to College resources, such as salary increase for a specific period of time.
- H. Suspension or dismissal from employment at the College.

## **XI. Request for Appeal**

If the Complainant or Respondent disagrees with the outcome of the formal investigation resolution, he/she may submit a formal written appeal to the Office of the President. Appeals of the findings of responsibility must be based on procedural error or new information that was not available at the time of the Formal Review, and could not have been produced by a reasonable effort. Complainants and Respondents may also appeal sanctions based on grounds that the sanctions imposed are disproportionate to the violation of policy that was found to have occurred. In addition to the written appeal, the Complainant or Respondent may submit an additional statement regarding the case.

## **XII. Appeals Process**

If a written appeal is received within the allowable time frame, the President will appoint and convene an Appeals Panel within five (5) business days of receipt of the appeal. Once the Appeals Panel is convened it is allotted five (5) to ten (10) business days to review the case and sanctions and make a determination. The appeals panel's decision is final.

The Appeals Panel is selected by the President and will consist of the following:

1. One Faculty member, recommended by the Academic Affairs Committee.
2. One Staff member, recommended by the Director of Human Resources.
3. Chairperson, appointed by the President from the President's Senior Leadership Team.
4. If there is a conflict of interest, the President will appoint an additional panel member from the campus community.

The Appeals Panel will review the case and make a recommendation which is final. A majority vote will be necessary in deciding all cases. The decision will be submitted to the President of the College and Title IX Coordinator.

The Title IX Coordinator, or designee, will send written notice simultaneously to the Complainant and Respondent of the findings of the Appeals Board within five (5) business days of receipt of the findings.

## **XIII. Resolution Through Other Means**

If Complainants and Respondents are not satisfied with the attempts to resolve the complaint of sexual misconduct, they may seek resolution through other sources, including the New York

State Division of Human Rights, the Equal Employment Opportunity Commission or Office of Civil Rights of the United States Department of Education (1-800-421-3481).

### **Section III – Reporting and Monitoring**

#### **I. Dispositions/Compliance Monitoring**

The Title IX Deputy Coordinator is responsible for monitoring compliance with decisions made and sanctions imposed under this policy, as applicable.

The Title IX Coordinator will notify appropriate campus community members of the sanctions that trigger monitoring responsibilities. Failure to observe the terms and/or conditions of any informal resolution or sanctions imposed in formal resolutions constitutes grounds for additional disciplinary action by the Title IX Officers.

#### **II. Records of Complaints/Reports**

A copy of the investigation report and the final decision shall be maintained by the Title IX Coordinator. A summary of the report and decision will be included in the Respondent's personal file in the Registrar's Office or in the employee's file in Human Resources, (as applicable) only if the determination concludes that the respondent engaged in prohibited conduct.

When a student respondent is found responsible for crimes involving violence, including but not limited to sexual violence, and is suspended or permanently terminated, a notation will appear on the student's transcript which will state "suspended after a finding of responsibility for a code of conduct violation" or "expelled after a finding of responsibility for a code of conduct violation". Transcript notations for expulsion are permanent. Transcript notations for suspension can be removed after one year if the student petitions to institution to have the notation removed. If a student respondent who is alleged to have committed a crime of violence, including but not limited to sexual violence, withdraws while disciplinary charges are pending, a notation will appear on the student's transcript which will state "withdrew with conduct charges pending" No record of a complaint is kept in the Complainant's Registrar or Human Resources file (as applicable) unless the investigation concludes that the Complainant was knowingly false and malicious in reporting the incident.

The Title IX Coordinator or designee will keep a record of all reports and complaints made under the Sexual Misconduct policy, regardless of the outcome.

All documents prepared and maintained pursuant to the Sexual Misconduct Policy and Procedures will conform to applicable governing law.

Retention and release of records associated with this policy will be in conformance with applicable law and regulations.

### **III. Annual Reporting**

The Title IX Coordinator, or designee, will provide the President of the College and the Senior Leadership Team with an annual confidential report, detailing the number and disposition of different types of incidents, allegations, reports and complaints of discrimination that have come to their attention that year. Information that could identify Complainants, or Respondents against whom no case has been founded, will not be included in this report. A summary of this report may be provided to the College community as long as confidentiality of individuals' identities is not breached.

**The President shall determine the propriety of a report to the entire College community. In addition, the Title IX Coordinator or designee will file a report annually of the aggregate data to the New York State Department of Education as required by New York State law.**

### **APPENDIX I: BEHAVIORAL EXAMPLES OF OTHER GENDER BASED OFFENSES**

#### **Dating Violence**

Dating violence is a pattern of coercive behaviors that serves to exercise control and power in an intimate relationship. The coercive and abusive behaviors can be physical, sexual, psychological, verbal and/or emotional. Relationship abuse can occur between current or former intimate partners who have dated, lived together, currently reside together on or off campus, or who otherwise connected through a past or existing relationship.

Dating violence can occur in other-sex and same-sex relationships as well as in transgender relationships.

Dating violence includes, but is not limited to: attempting to cause or causing bodily injury by hitting, slapping, punching, hair pulling, kicking, and/or other forms of unwanted physical contact that causes harm; knowingly restricting the movements of another person; isolating or confining a person for a period of time; controlling or monitoring behavior; being verbally and/or emotionally abusive; exhibiting extreme possessiveness or jealousy.

#### **Domestic Violence**

Domestic violence includes, but is not limited to: attempting to cause or causing bodily injury by hitting, slapping, punching, hair pulling, kicking, and/or other forms of unwanted physical contact that causes harm; knowingly restricting the movements of another person; isolating or confining a person for a period of time; controlling or monitoring behavior; being verbally and/or emotionally abusive; exhibiting extreme possessiveness or jealousy.

#### **Stalking**

Examples of stalking behavior include, but are not limited to: unwelcome communication that can be face-to-face, phone, text, email, voice messages, written messages, gifts, etc.; pursuing and/or following another person or group; surveillance; trespassing; gaining unauthorized access to personal, medical, financial or any other identifying piece of information without explicit permission; accessing email, phone or other forms of personal communication in order to follow

or monitor another's activity.

Cyber-stalking is an extension of the physical form of stalking and is unacceptable at any level. Using electronic media such as the Internet, social networking sites, cell phones or similar devices or mediums to pursue, track, harass, monitor or make unwanted contact with another person is a violation of the stalking policy.

## **Sexual Harassment Case Studies**

- Let's take a look at a few scenarios that help explain the kind of behaviors that can constitute sexual harassment.
- These examples describe inappropriate behavior in the workplace that will be dealt with by corrective action, including disciplinary action.
- Remember, it is up to **all employees** to report inappropriate behavior in the workplace.

### **Example 1: Not Taking "No" for an Answer**

Li Yan's coworker Ralph has just been through a divorce. He drops comments on a few occasions that he is lonely and needs to find a new girlfriend. Li Yan and Ralph have been friendly in the past and have had lunch together in local restaurants on many occasions. Ralph asks Li Yan to go on a date with him—dinner and a movie. Li Yan likes Ralph and agrees to go out with him. She enjoys her date with Ralph but decides that a relationship is not a good idea. She thanks Ralph for a nice time, but explains that she does not want to have a relationship with him. Ralph waits two weeks and then starts pressuring Li Yan for more dates. She refuses, but Ralph does not stop. He keeps asking her to go out with him.

**Question 1.** When Ralph first asked Li Yan for a date, this was sexual harassment. True or False?

FALSE: Ralph's initial comments about looking for a girlfriend and asking Li Yan, a coworker, for a date are not sexual harassment. Even if Li Yan had turned Ralph down for the first date, Ralph had done nothing wrong by asking for a date and by making occasional comments that are not sexually explicit about his personal life.

**Question 2.** Li Yan cannot complain of sexual harassment because she went on a date with Ralph. True or False?

FALSE: Being friendly, going on a date, or even having a prior relationship with a coworker does not mean that a coworker has a right to behave as Ralph did toward Li Yan. She has to continue working with Ralph, and he must respect her wishes and not engage in behavior that has now become inappropriate for the workplace.

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Li Yan complains to her supervisor, and the supervisor (as required) reports her complaint to the person designated by her employer to receive complaints. Ralph is questioned about his behavior and he apologizes. He is instructed by the designated person to stop. Ralph stops for a while but then starts leaving little gifts for Li Yan on her desk with accompanying love notes. The love notes are not overtly offensive, but Ralph's behavior is starting to make Li Yan nervous, as she is afraid he may start stalking her.

**Question 3.** Ralph's subsequent behavior with gifts and love notes is not sexual harassment because he has stopped asking Li Yan for dates as instructed. He is just being nice to Li Yan because he likes her. True or False?

FALSE: Li Yan should report Ralph's behavior. She was entitled to have effective assistance in getting Ralph to stop his inappropriate workplace behavior. Because Ralph has returned to pestering Li Yan after being told to stop, he could be subject to serious disciplinary action for his behavior.

#### **Example 4: Too Close for Comfort**

Keisha has noticed that her new boss, Sarah, leans extremely close to her when they are going over the reports that she prepares. She touches her hand or shoulder frequently as they discuss work. Keisha tries to move away from her in these situations, but she doesn't seem to get the message.

**Question 1.** Keisha should just ignore Sarah's behavior. True or False?

FALSE: If Keisha is uncomfortable with Sarah's behavior, she has options. If she feels comfortable doing so, she should tell Sarah to please back off because her closeness and touching make her uncomfortable. Another option is to complain directly to a person designated by her employer to receive complaints, who will speak with Sarah. Although this may not be sufficiently severe or pervasive to create an unlawful harassment situation (unless it was repeated by Sarah after she was told to stop), there is no reason for Keisha to be uncomfortable in the workplace. There is no valid reason for Sarah to engage in this behavior.

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Before Keisha gets around to complaining, Sarah brushes up against her back in the conference room before a meeting. She is now getting really annoyed but still puts off doing anything about it. Later Sarah "traps" Keisha in her office after they finish discussing work by standing between her and the door of the small office. Keisha doesn't know what to do, so she moves past her to get out. As she does so, Sarah runs her hand over Keisha's breast.

**Question 2.** Sarah's brushing up against Keisha in the conference room could just be inadvertent and does not give Keisha any additional grounds to complain about Sarah. True or False?

FALSE: Sarah is now engaging in a pattern of escalating behavior. Given the pattern of her "too close" and "touching" behavior, it is unlikely that this was inadvertent. Even before being "trapped" in Sarah's office, Keisha should have reported all of the behaviors she had experienced that had made her uncomfortable.

**Question 3.** Sarah touching Keisha's breast is inappropriate but is probably not unlawful harassment because it only happened once. True or False?

FALSE: Any type of sexual touching is very serious and does not need to be repeated to constitute sexual harassment. Keisha should immediately report it without waiting for it to be repeated. Sarah can expect to receive formal discipline, including possible firing.

Source: <https://www.ny.gov/programs/combating-sexual-harassment-workplace>

## **APPENDIX II: STUDENT BILL OF RIGHTS (Victim/Survivor/Reporter Bill of Rights)**

Maria College is committed to maintaining a community environment that fosters respect for the dignity and worth of each individual. The dignity of the individual should never be violated in any way, and the College community views with seriousness offenses against any person. Maria College is committed to providing options, support and assistance to victims/survivors of sexual misconduct, sexual harassment, domestic violence, dating violence, and/or stalking so that they can continue to participate in college-wide and campus programs, activities, and employment. Maria College is committed to addressing reports of sexual misconduct, sexual harassment, domestic violence, dating violence, and/or stalking in a prompt, fair, equitable, and impartial manner. All victims/survivors of these crimes and violations have the following rights regardless of whether the crime or violation occurs on campus, off campus, or while studying abroad.

Victims/Survivors/Reporters 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 decision about whether or not to disclose a crime or violation and participate in the 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, accused or respondent throughout the conduct process including during all meetings and witness interviews related to such process;
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or conduct process of the institution;
12. Be provided with a written copy of the College's policy and procedures regarding sexual misconduct.

Options in General:

Victims/survivors have many options that can be pursued simultaneously, including one of the following:

- Receive resources, such as counseling and medical attention on or off campus.



- Confidentially disclose a crime or violation to the Director of Counseling and Accessibility Services. Confidential resources can share options and advice without any obligation to tell anyone, and will not share information without the consent of the victim/survivor.
- Anonymously disclose a crime or violation. The College does have a duty to investigate anonymous disclosures to the extent possible, based on the information disclosed.
- Make a report with privacy (Victims/Survivors have the right of privacy when reporting to College officials, to the extent possible under the circumstances. However information must be shared with other members of the community if there is a need to know.) to:
  - o Any employee with the authority to address complaints, all Faculty, Staff and Administrators, including the Title IX Coordinator, Dean of Students, or Human Resources; and/or
  - o Campus Security.

#### Important Resources:

##### On-Campus:

- Title IX Coordinator: 518- 861-2505 (private, non-confidential).
- Director of Counseling and Accessibility Services: 518-861-2508 (confidential).

##### Off-Campus

- Police 24-hour: 911.
- Albany County Crime Victims and Sexual Violence Center crisis hotline: 518-447-7716 (main number: 518-447-7100).
- Equinox Inc. Domestic Violence Services crisis hotline: 518-432-7865 (main number: 518-434-6135).
- Sexual Assault and Crime Victims Assistance Program 24-hour hotline: (518) 271-3257
- In Our Own Voices – LGBT Domestic Violence Support Line: 518-432-4341.
- New York State Police Dedicated 24-hour hotline: 1-844-845-7269.

### **APPENDIX III: RESPONDENT BILL OF RIGHTS**

Maria College is committed to maintaining a community environment that fosters respect for the dignity and worth of each individual. The dignity of the individual should never be violated in any way, and the college community views with seriousness offenses against any person. Maria College is committed to addressing reports of sexual misconduct, sexual harassment, domestic violence, dating violence, and/or stalking in a prompt, fair, equitable, and impartial manner. All Respondents named in reported crimes and violations of these acts, have the following rights regardless of whether the reported crime or violation occurs on campus, off campus, or while studying abroad.

Respondents 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 decision about whether or not to disclose a crime or violation and participate in the 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 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 throughout the process including during all meetings and witness interviews related to such process;
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or conduct process of the institution;
12. Be provided with a written copy of the College's policy and procedures regarding sexual misconduct.

Important Resources:

On-Campus:

- Title IX Coordinator: 518- 861-2505 (private, non-confidential)
- Director of Counseling and Accessibility Services: 518-861-2508 (confidential)

All members of the Maria College community are welcome and encouraged to report incidents that they experience or witness, as well as behavior or conduct of others that raises concerns regarding an individual's mental health. For a full list of student behavior prohibited by the Maria College Student Code of Conduct, including sexual misconduct and academic misconduct, please refer to the Student Handbook. For a full list of faculty or staff behavior prohibited by College employment policies, please refer to the Employee Handbook.

Submitting this form constitutes a formal complaint and may result in the College conducting an investigation or taking disciplinary action against an individual who committed misconduct, if appropriate. For incidents involving sexual misconduct, the College will generally seek your consent before conducting an investigation. You may also submit a complaint anonymously, however remaining anonymous may inhibit the College's ability to conduct a full investigation of the incident and/or communicate with you regarding actions taken.

Incident reports about or from **students** should be submitted to the administrative assistant in the Student Support Suite located in Mercy Hall or Security Desk in the Main Building Lobby. Incident reports about **faculty or staff**, from faculty or staff, should be submitted to the Office of Human Resources or Security Desk in the Main Building Lobby. Incident reports related to **sexual misconduct** should be submitted to the Title IX Coordinator located in Mercy Hall.

**Your Name (optional):** \_\_\_\_\_

**Your Affiliation to Maria College:** ☐ Student ☐ Faculty/Staff Other: \_\_\_\_\_

**Phone:** \_\_\_\_\_ **Email:** \_\_\_\_\_

**Name(s) of individual(s) involved (if known):**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Their Affiliation to Maria College:** ☐ Student ☐ Faculty/Staff Other: \_\_\_\_\_

**Duration of the behavior being reported:** ☐ Single Incident ☐ Multiple Incidents/Ongoing

**Incident Date(s) and Time:** \_\_\_\_\_

**Incident Location(s):** \_\_\_\_\_

**Witnesses or other people who may have helpful information:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Have you already notified any other College officials about this individual's behavior?**

☐ **Yes. Who?** \_\_\_\_\_ ☐ **No**

**Have you already notified any law enforcement agency about this individual's behavior?**

☐ **Yes. Who?** \_\_\_\_\_ ☐ **No**

Reports about or from students: Student Support Suite (Mercy Hall) or Security Desk (Main Building Lobby)  
 Reports about faculty/staff/other: Office of Human Resources or Security Desk (Main Building Lobby)  
 Reports about sexual misconduct: Title IX Coordinator (Mercy Hall)

**Description of incident:** (Please be as detailed as possible. Think: who, what, where, when, why, how.)

[illegible]

*You are welcome and encouraged to submit documentation in support along with this form.*

***This section to be completed by Maria College officials:***

Date/Time Report Received: \_\_\_\_\_

Received By (name and office): \_\_\_\_\_

Report referred to another office of the College?

☐ No. This will be addressed by the receiving office.

☐ Yes. Referred to: \_\_\_\_\_

Notes: \_\_\_\_\_

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### **Acknowledgement of Receipt**

I acknowledge that I have read and understand Maria College's Sexual Misconduct Policy. I understand that the rules and policies contained in the Sexual Misconduct Policy may be updated, modified, or deleted at any time and that it is my responsibility to stay informed of any changes.

I will comply with the rules and regulations of Maria College prohibiting sexual misconduct and guidelines relative to preventing sexual harassment and other forms of misconduct.

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**Employee Name (Printed)**

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**Signature**

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**Date**

\* Acknowledgement of Receipt for Maria College **Faculty and Staff** must be returned to Human Resources Office