

UNDERSTANDING THE GENDER-BASED DISCRIMINATION PROCESS AT MARIETTA COLLEGE

1) ALLEGED PROHIBITED CONDUCT OCCURS:

A. Sex/Gender Discrimination: when an individual is, on the basis of sex/gender:

- Treated differently in determining whether such person satisfies any requirement or condition for the provision of any aid, benefit, or service;
- Provided different aid, benefits, or services;
- Provided aid, benefits, or services in a different manner;
- Denied any aid, benefit, or service;
- Subjected to separate or different rules of behavior, sanctions, or other treatment;
- Treated differently concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;
- Discriminated against by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex/gender in providing any aid, benefit, or service to students or employees;
- Otherwise limited in the enjoyment of any right, privilege, advantage, or opportunity with regards to aid, benefits, or services; or
- Treated differently with regard to terms, conditions, or benefits of employment, or in the recruitment, consideration, or selection thereof.

Discrimination on the basis of sex/gender in employment is permissible in situations where sex/gender is a bona fide occupational qualification reasonably necessary to the normal operation of the College.

B. Sex/Gender Harassment: non-sexual harassment on the basis of one's sex/gender when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or grade in a program, course, or activity;
- Submission to or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting an individual; or
- Such conduct is sufficiently pervasive, offensive, or abusive to have the purpose or reasonable effect of interfering with an individual's work or educational performance, or creating an intimidating, hostile, or offensive work environment, under both an objective and subjective standard. A single incident may create a hostile environment if the incident is sufficiently severe.

The determination as to whether a hostile environment exists is based on the totality of the circumstances, including but not limited to:

- The nature and severity of the conduct;
- The type, frequency, and duration of the conduct;
- The identity of and relationship between the Respondent and the Complainant;
- The number of individuals involved;
- The age and maturity levels of the Respondent and Complainant; and

- The location of the conduct and the context in which it occurred.

C. **Sexual Harassment** is any of the following:

Quid Pro Quo - Conduct on the basis of sex where a College employee conditions the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct;

Unwelcome Conduct - Unwelcome conduct on the basis of sex determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity (*prohibited under Federal Title IX rules and Marietta College policy*); or unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature (*prohibited under Marietta College policy*) when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, evaluation of academic work, or any aspect of a College program, course, or activity;
- Submission to or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting an individual; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance, or creating an intimidating, hostile, or offensive working or educational environment, under both an objective and subjective standard. A single incident may create a hostile environment if the incident is sufficiently severe

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"Sexual Assault" - engaging or attempting to engage in one of the following activities with another individual without consent or where the individual cannot consent because of age or temporary or permanent mental incapacity:

- Sexual penetration (anal, oral, or genital), including penetration with a body part (e.g. penis, finger, hand, or tongue) or an object, however slight;
- Intentional touching of the intimate body parts of another, or intentional touching with one's intimate body parts, for the purpose of sexual gratification. Intimate body parts include but are not limited to, the mouth, neck, buttocks, anus, groin, genitalia, breast, or the clothing covering these parts; however, sexual contact can occur with any part of the body;
- Sexual intercourse (anal, oral, or genital) when prohibited by state law, including sexual intercourse between individuals who are not permitted to

marry, and sexual intercourse with a person who is under the statutory age of consent.

“Dating violence” - violence committed by a person on the basis of sex:

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

“Domestic violence” - defined to include felony or misdemeanor crimes of violence committed on the basis of sex:

- by a current or former spouse or intimate partner of the victim;
- by a person with whom the victim shares a child in common;
- by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
- by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction; or
- by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

“Stalking” - engaging in a course of conduct on the basis of sex 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.

D. **Sexual Exploitation** – a specific type of ‘unwelcome conduct’ constituting sexual harassment by taking advantage of another’s sexuality in a non-consensual manner.

Examples of Sexual Exploitation include, but are not limited to:

- The non-consensual viewing of nudity of another;
- The non-consensual streaming of images of sexual activity;
- The non-consensual sharing or posting of nude images of another;
- The non-consensual recording of individuals in locations in which they have a reasonable expectation of privacy (such as restrooms or locker rooms) even if the images do not capture nudity;
- Intentionally exposing one’s genitals to another person in non-consensual circumstances;
- Knowingly exposing another to a sexually transmitted disease under circumstances that could reasonably lead to transmission of the disease; and
- Inducing incapacitation of another via drugs and/or alcohol for purposes of making that person vulnerable to non-consensual sexual conduct or non-consensual sexual contact.

- 2) **KNOWLEDGE OF ALLEGED PROHIBITED CONDUCT IS SHARED WITH AN EMPLOYEE OF MARIETTA COLLEGE:**
- a) THAT KNOWLEDGE CAN BE SHARED BY THE PERSON WHO DIRECTLY EXPERIENCED THE ALLEGED PROHIBITED CONDUCT, OR IT CAN BE SHARED BY A THIRD PARTY
 - b) THAT KNOWLEDGE CAN BE SHARED WITH A CONFIDENTIAL RESOURCE, OR IT CAN BE SHARED WITH A NON-CONFIDENTIAL RESOURCE
- 3) KNOWLEDGE SHARED WITH A NON-CONFIDENTIAL RESOURCE **MUST** BE REPORTED TO A TITLE IX OFFICER (COORDINATOR OR DEPUTY COORDINATOR). KNOWLEDGE SHARED WITH A CONFIDENTIAL RESOURCE **REMAINS CONFIDENTIAL** AND WILL NOT BE SHARED WITH A TITLE IX OFFICER OF THE COLLEGE.
- 4) THE **TITLE IX OFFICER** ENGAGES WITH THE PERSON ALLEGED TO HAVE EXPERIENCED PROHIBITED CONDUCT UNDER TITLE IX AND/OR COLLEGE POLICY (THIS INDIVIDUAL IS REFERRED TO AS THE POTENTIAL COMPLAINANT)
- a) THE **POTENTIAL COMPLAINANT CHOOSES NOT TO SHARE ANY INFORMATION** RELATED TO THE ALLEGED PROHIBITED CONDUCT → NO ACTION CAN BE TAKEN BY THE COLLEGE, BEYOND OFFERING THE POTENTIAL COMPLAINANT INFORMATION ABOUT **CONFIDENTIAL RESOURCES** ON AND OFF CAMPUS.
 - b) THE **POTENTIAL COMPLAINANT CONFIRMS THAT THE ALLEGED PROHIBITED CONDUCT OCCURRED BUT DOES NOT WISH TO PURSUE RESOLUTION** → THE COLLEGE CANNOT PURSUE ANY RESOLUTION IN WHICH THE POTENTIAL COMPLAINANT **AGREES TO BE NAMED AS THE PERSON WHO HAS MADE A FORMAL COMPLAINT**, BUT THE COLLEGE MAY DETERMINE THAT IT NEEDS TO **PURSUE RESOLUTION** WITH THE **RESPONDENT** IN THE INTEREST OF **PROTECTING THE CAMPUS COMMUNITY, EVEN IN THE ABSENCE OF PARTICIPATION BY THE POTENTIAL COMPLAINANT IN THE RESOLUTION PROCESS.**

THE COLLEGE CAN ALSO PROVIDE **SUPPORTIVE MEASURES** TO THE POTENTIAL COMPLAINANT, EVEN IN THE ABSENCE OF ACTION WITH THE RESPONDENT. SUPPORTIVE MEASURES INCLUDE THINGS LIKE: adjusting the reporting party's class schedule, making changes to the reporting party's housing assignment, etc.

INFORMATION ABOUT THE REPORT WILL ONLY BE SHARED WITH THE RESPONDENT IN THE EVENT THAT THE POTENTIAL COMPLAINANT WISHES TO PURSUE RESOLUTION OF THE MATTER, OR THE COLLEGE DETERMINES THAT IT

NEEDS TO SEEK RESOLUTION OF THE MATTER IN THE INTEREST OF PROTECTING THE CAMPUS COMMUNITY.

- c) THE **POTENTIAL COMPLAINANT** CONFIRMS THAT THE ALLEGED PROHIBITED CONDUCT OCCURRED AND WISHES TO PURSUE RESOLUTION IN THE MATTER, BUT **DOES NOT WISH TO PURSUE FORMAL RESOLUTION** → **INFORMAL RESOLUTION** OPTIONS ARE AVAILABLE, THE TERMS OF WHICH ARE MUTUALLY AGREED UPON BY THE PARTIES (adjusting class schedules of one or both parties, making changes to the housing assignments of one or both parties, etc.).

UNDER **INFORMAL RESOLUTION**, THERE IS **NO FINDING OF RESPONSIBILITY** AND THEREFORE **NO SANCTIONING**.

FOR **INFORMAL RESOLUTION**, THE COMPLAINANT MUST AGREE TO BE NAMED AND TO PARTICIPATE IN REACHING AN INFORMAL RESOLUTION AGREEMENT WITH THE RESPONDENT. **INFORMAL RESOLUTION IS NOT AN OPTION** WHEN COMPLAINANT IS A STUDENT AND RESPONDENT IS AN EMPLOYEE OF THE COLLEGE.

- d) THE **COMPLAINANT** CONFIRMS THAT THE ALLEGED DISCRIMINATION OCCURRED, BELIEVES THAT IT MAY CONSTITUTE PROHIBITED CONDUCT UNDER TITLE IX AND/OR COLLEGE POLICY, AND **WISHES TO PURSUE FORMAL RESOLUTION** → **BIG 'I' INVESTIGATION** (i.e, a formal investigation) LEADING TO A FORMAL RESOLUTION OF THE COMPLAINT

5) **BIG 'I' INVESTIGATION** AND THE **FORMAL RESOLUTION** PROCESS

- a) OUTSIDE INDEPENDENT **INVESTIGATOR** CONDUCTS FORMAL INVESTIGATION AND PROVIDES INVESTIGATION REPORT TO TITLE IX OFFICER, WITH ASSESSMENT OF WHETHER ALLEGED PROHIBITED CONDUCT MEETS **FEDERAL TITLE IX THRESHOLD REQUIREMENTS**. IF IT DOES NOT, AND TITLE IX **COORDINATOR AGREES THAT IT DOES NOT**, DECISION MAKING IS ASSIGNED TO AN **INVESTIGATIVE TEAM**, MADE UP OF THE INVESTIGATOR AND ONE OTHER TRAINED INVESTIGATOR WHO WAS NOT PREVIOUSLY INVOLVED IN THE INVESTIGATION OF THE COMPLAINT.
- b) IF ALLEGED PROHIBITED CONDUCT IS DETERMINED TO MEET FEDERAL TITLE IX THRESHOLDS, TITLE IX OFFICER APPOINTS A **HEARING PANEL**, AND CHAIR OF THAT PANEL FACILITATES A LIVE HEARING PROCESS.
- c) HEARING PANEL RENDERS A FINDING IN THE MATTER AND COMMUNICATES THAT FINDING TO TITLE IX OFFICER, WHO SHARES THAT FINDING WITH BOTH THE COMPLAINANT AND THE RESPONDENT. IF THERE IS A FINDING OF

RESPONSIBILITY, ANY **RESULTING SANCTIONS** ARE ALSO COMMUNICATED TO THE TITLE IX OFFICER, WHO IN TURN COMMUNICATES THOSE SANCTIONS TO BOTH THE COMPLAINANT AND THE RESPONDENT.

- d) FOLLOWING A DECISION FROM A LIVE HEARING PROCESS OR AN INVESTIGATIVE RESOLUTION PROCESS, EITHER PARTY MAY **APPEAL THE FINDING** OF RESPONSIBILITY OR NON-RESPONSIBILITY **AND/OR ANY SANCTION** IMPOSED, ON APPROPRIATE AND NARROWLY DEFINED GROUNDS. ANY SUCH APPEAL WILL BE SUBMITTED TO AN APPEAL PANEL APPOINTED BY THE TITLE IX OFFICER, AND APPROPRIATE ACTION WILL BE DETERMINED BY THE APPEAL PANEL AND COMMUNICATED TO THE TITLE IX OFFICER FOR COMMUNICATION TO THE COMPLAINANT AND THE RESPONDENT. APPROPRIATE ACTION MAY INVOLVE RETURNING THE MATTER TO THE INVESTIGATOR FOR ADDITIONAL INVESTIGATION OR TO THE HEARING PANEL OR INVESTIGATIVE TEAM FOR ADDITIONAL ACTION. IF AN APPEAL REQUEST IS DENIED BY THE APPEAL PANEL, THAT DECISION IS FINAL.

EVERY INVESTIGATION AND RESOLUTION OF A FORMAL GENDER-BASED DISCRIMINATION COMPLAINT MUST BE HANDLED IN A MANNER THAT IS **TIMELY, THOROUGH, AND** **EQUITABLE**.

A **COMPLAINANT** MAY CHOOSE TO MOVE FORWARD WITH **FORMAL RESOLUTION OF A GENDER-BASED DISCRIMINATION COMPLAINT AT ANY POINT IN TIME**, EVEN IF PREVIOUSLY THAT PERSON OPTED NOT TO PURSUE FORMAL RESOLUTION, **UNLESS AN *INFORMAL RESOLUTION AGREEMENT* WAS ALREADY REACHED IN THE MATTER.**