

MERCYHURST UNIVERSITY
Title IX – Sexual and Gender Based Misconduct Policy

Mercyhurst University policy prohibits sexual harassment and sexual and gender based misconduct against any staff members, applicant, student, administrator, faculty member, or third-party vendor. Respect for the dignity and work of each individual is a guideline of the University. All persons will be held to standards of conduct which ensure that all members of the University community are free from sexual and other forms of harassment. Nothing in the policy is meant to limit the rights of an aggrieved person to seek relief in a state or federal court of law. The term harassment refers to unwelcome mistreatment based upon a person's protected characteristics or class membership which is intended to or has the effect of preventing or interfering with a person's full participation in the University's work or academic environment.

In accordance with Title IX of the Education Amendment Act of 1972, Mercyhurst University prohibits discrimination based on sex in its educational and athletic programs, as well as in extracurricular activities sponsored by the University. To ensure compliance with Title IX and other federal and state civil rights laws, the University has developed policies and procedures that prohibit sex discrimination in all forms. An individual's sex cannot be considered as a basis for making decisions in areas such as:

Admission and graduation requirements
Access to course enrollment or campus facilities
Counseling and health services
Competitive athletic programs and activities
Housing, financial aid, or other benefits/services

A student, employee, or other individual may use this grievance procedure to file a complaint alleging a violation of Title IX against any Mercyhurst student, Mercyhurst employee, or third party. Complaints may include claims of sex discrimination, sexual harassment, sexual violence, or any other forms of sexual misconduct against the complainant or against others. The person aggrieved may choose to file a criminal complaint with the appropriate local or state authorities.

The University takes complaints very seriously and will work with complainants to ensure their safety and to remedy the situation. Mercyhurst University encourages those who have experienced any form of sex discrimination to report the incident promptly and to seek all available assistance.

The University does not limit the timeframe for filing a report of discrimination based on sex. Reports can be submitted at any time following an incident, although the University's ability to take any action may be limited by the matriculation status of the alleged Respondent.

Complainant – a person who initiates the complaint process under this policy

Respondent – a person against whom a complaint is filed under this policy

Witness – a person that is present during an incident that violates this policy

Investigator – a person assigned to investigate the complaint

Please Note: The use of alcohol and other drugs never makes someone at fault for being sexually assaulted. Alcohol and other drugs can lower inhibitions and create an atmosphere of confusion over whether consent is freely and affirmatively given. The use of alcohol and other drugs shall in no way limit the responsibility of students for the consequences of sexual misconduct policy violations.

The University's primary concern is student safety. Students may be reluctant to report instances of sexual assault because they fear being charged with policy violations, such as underage alcohol consumption. To encourage reporting, any other policy violations may be addressed (if necessary) separately from a sex discrimination allegation.

MERCYHURST UNIVERSITY Title IX – Complaint Procedure

Mercyhurst University encourages those who have experienced any form of sex discrimination to report the incident promptly and to seek all available assistance. Mercyhurst University takes complaints very seriously and will work with complainants to ensure their safety and to remedy the situation.

Filing a Complaint

A complaint should be filed as soon as possible after the incident. The complaint should be filed in writing by utilizing the "Title IX Complaint Form." Complaint forms can be obtained from any of the below referenced individuals or on the web at <https://www.mercyhurst.edu/title-ix-policies-and-procedures>. Any person can also anonymously report Title IX violations at <https://spwfe.mercyhurst.edu/CampusLife/titleix/Pages/Anonymous-Reporting.aspx>. Supplemental sheets may be attached to provide additional details of the alleged violation. The completed "Title IX Complaint Form" and any supplemental attachments can be submitted to any of the following:

Alice Agnew
Title IX Coordinator
Egan 311
aagnew@mercyhurst.edu
(814) 824-2362

Police & Safety
Lower Level McAuley
(814) 824-2304
ResLife on Duty
(814) 824-3889

Laura Zirkle
Vice President for Student Life
Egan 314
lzirkle@mercyhurst.edu
(814) 824-2262

Stacey Gaudette
Assistant Director of Athletics
Lower Level Baldwin
sgaudette@mercyhurst.edu
(814) 824-2079

Jackie Fink
Director of Administrative Services
Miller 104
jfink@mercyhurst.edu
(814) 725-6274

Courtney Olevnik
Director of Donor Relations
Egan 207
colevnik@mercyhurst.edu
(814) 824-2246

All complaint forms that are received will be given to the Title IX Coordinator.

Support Services

The University offers various supportive measures available for those who have experienced any form of sex discrimination. Support services include:

- *Counseling:* Students may receive free and **confidential** counseling at the Counseling Center, (814) 824-3650. Mercyhurst University employees may contact the Title IX Coordinator or reference the Employee Handbook for information regarding counseling options.
- *Medical Assistance:*

UPMC Hamot	Saint Vincent
201 State Street – Erie, PA 16550	232 W. 25 th St – Erie, PA 16544
(814) 877-6000	(814) 898-2576

The University encourages all individuals to seek assistance from a medical provider immediately after an incident of sexual misconduct. An individual's physical well-being should be addressed as soon as possible, whether or not that individual wishes to make a report to the University or law enforcement. A medical provider can provide emergency and/or follow-up medical services, and meet two goals: first, to diagnose and treat the full extent of any injury or physical effect and second, to properly collect and preserve evidence. Following an incident of sexual assault, evidence is best preserved for proof of a criminal offense within 96 hours of the assault. In the event of a report immediately following an incident of sexual assault, a Complainant is encouraged to seek medical attention as soon as possible, and even before any

shower, bathing, douching, brushing of teeth, drinking, or change of clothing. Similarly, any clothing, towels or bedding should remain untouched pending collection by law enforcement. Whether or not an individual has chosen how to proceed at the time of the medical examination, taking the step to gather evidence will preserve the full range of options to seek resolution through the University's complaint processes or through the pursuit of criminal investigation.

- *Off Campus Resources:*
 - Crime Victim Center (confidential)
125 West 18th Street - Erie, PA 16501
(814) 455-9414 or (800) 352-7273

 - SafeNet (confidential)
PO Box 1436, Erie, PA 16512
(814) 454-8161 or (814) 455-1774

 - Erie Police Department
626 State Street - Erie, PA 16501
(814) 870-1125

- *Title IX Coordinator:* serves as the central reference person for information about filing the complaint and the investigative procedure, as well as available support services: *Alice Agnew, (814) 824-2362*. The Title IX Coordinator is responsible for implementing and monitoring Title IX compliance efforts on behalf of the University. The Title IX Coordinator will:
 - Serve as a resource for students wishing to report any acts of sexual violence or sexual harassment, i.e. violations of Title IX;
 - Provide oversight for all Title IX complaints and identify patterns, issues, or problems regarding those same complaints;
 - Review and support the informational initiatives enabling students, staff and faculty to fully understand sexual violence and sexual harassment as forms of sexual discrimination and further educate the community about University policies and procedures.

- *Remedies and Reassignments:* At any time during the process, the Title IX Coordinator/Investigator/ Director of Student Conduct may recommend that interim protections or remedies for the parties involved or witnesses be provided by appropriate University officials. These protections or remedies may include separating the parties, placing limitations on contact between the parties, making alternative workplace arrangements or student housing arrangements, and suspension. When the Complainant and the Respondent participate in the same courses, reside in the same residence or in proximity to one another, or participate in the same activities (sports teams, organizations on campus, etc.) either party may request a fair and immediate interim remedy.

The Title IX Coordinator will consult with the Office of Academic Affairs to determine alternative classroom assignment(s) for the Respondent and/or the Complainant who has experienced a sex offense and will consult with the Director of Residence Life to determine an alternative housing assignment. If a student employee and the Respondent work in the same department or area, alternative work assignments may be made by the appropriate administrator upon request.

In certain circumstances, it may be necessary to impose suspension immediately. The interim suspension is used when there is substantial reason to fear harm to persons or property, to ensure the safety and well-being of members of the University community, or when there is a threat of or actual disruption or interference with the normal operation of the University. During the period of interim suspension, a defiant trespass notice will be issued. Failure to comply with the terms of interim protections may be considered a separate violation of the Student Conduct Code (see Student Handbook).

POLICY

This policy applies to members of the Mercyhurst Community whether on or off campus.

Sexual Misconduct is defined as any activity of a sexual nature that violates another individual's physical and/or emotional well-being or personal space without that person's explicit consent. Sexual misconduct incorporates a range of behaviors including rape, sexual assault (which includes any kind of nonconsensual sexual contact), sexual harassment, relationship violence, stalking, and any other conduct of a sexual nature that is nonconsensual, or has the effect of threatening, intimidating, or coercing a person(s). Sexual misconduct occurs when there is a lack of mutual consent about sexual activity.

Behaviors that violate the Sexual Misconduct Policy include, but are not limited to, the following:

Sexual Assault: Any type of sexual contact or behavior that occurs without the explicit consent of the other person or is obtained through the use of force, threat of force, intimidation or coercion. This includes, but is not limited to, the following:

Sexual intercourse (anal, oral or vaginal) with some penetration, however slight by another person or with any object by another person, and any sexual contact, however slight, by another person or with any object, by another person.

Rape: Sexual intercourse by forcible compulsion or threat of forcible compulsion or where one of the participants lacks the capacity to consent.

- Compulsion can be use of physical, intellectual, moral, emotional or psychological force, either expressed or implied.
- It also includes sexual intercourse with a person who is unconscious, incapacitated by alcohol or drugs, underage, mentally challenged, unconscious or asleep.

Sexual Contact: Includes intentional contact with breasts, buttocks, groin, genitals, mouth or other bodily orifices of another person or touching another person with any of these body parts or making another person touch you or themselves with any of these body parts. It also includes intentional contact with any bodily part in a sexual manner.

Stalking: A course of conduct directed at a specific person that would cause a reasonable person to fear for her, his, or others' safety, or to suffer substantial emotional distress.

Stalking behaviors may include, but are not limited to:

- Non-consensual communication, including face-to-face communication, telephone calls, voice messages, e-mails, text messages, messages on social media, written letters, gifts, or any other communications that are undesired and place another person in fear.
- Pursuing, following, waiting, or showing up uninvited at or near a residence, workplace, classroom, or other places frequented by the Complainant.
- Surveillance or other types of observation including staring, and/or peeping.
- Trespassing and/or vandalism targeted at a specific person.
- Gathering information about an individual from friends, family, and/or coworkers.

Cyber-stalking: A particular form of stalking in which threatening behavior or unwanted sexual advances directed at another person using electronic media such as: web pages, social networks, blogs, cell phones, texts, or other online and computer contact.

Some examples of cyber-stalking may include, but are not limited to:

- Repetitive nonconsensual or unsolicited emails.
- Instant messages and messages posted in online bulletin boards.
- Unsolicited communications about a person, their family, friends, or co-workers that may be deemed threatening.
- Sending/posting unwelcomed and unsolicited messages with another username.
- Using electronic devices or software to track and/or obtain private information and to contact and/or post threatening or personal information.

Domestic Violence: includes asserted violent misdemeanor and felony offenses committed by the Complainant's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

Dating Violence: violence by a person who is in or has been in a social relationship of a romantic or intimate nature with the Complainant. Whether there was such a relationship will be gauged by its length, type, and frequency of interaction.

Sexual Harassment: Any unwelcome conduct of a sexual nature that includes unwanted sexual advances, requests for sexual favors, and other visual, verbal, non-verbal, or physical conduct of a sexual nature when: (1) submission to such conduct is made a term or condition of employment or the educational relationship; (2) submission to or rejection of such conduct is used as a basis for employment or education decisions affecting the individual; or (3) such conduct has the effect of unreasonably interfering with a student's or employee's work performance or creating an intimidating, hostile, or offensive working, educational, or living environment.

Examples of sexual harassment include, but are not limited to the following behaviors:

- Sexually degrading words or gestures to describe an individual.
- Unwelcome touching, patting, pinching, or brushing another's body or clothing.
- Comments about an individual's body, clothing or lifestyle which have sexual implications.
- Repeated offensive sexual flirtation, leering or ogling.
- Display of sexually demeaning objects, pictures, or cartoons in hallways, outdoor areas and rooms publicly accessible to members of the University community, including offices.
- Conduct of a sexual nature that interferes with an individual's academic or work performance or creates an intimidating, hostile or offensive environment.
- Implied or direct threats or insinuations that an individual's refusal to submit to sexual advances will adversely affect the individual's status, evaluation, wages, advancement, duties or career development.

Sexual exploitation is an act or acts committed through non-consensual abuse or exploitation of another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any other non-legitimate purpose.

The act or acts of sexual exploitation are prohibited even though the behavior does not constitute one of the other sexual misconduct offenses.

Examples of sexual exploitation include:

- Observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved
- Non-consensual streaming of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved
- Exposing another's genitals in non-consensual circumstances
- Knowingly exposing another individual to a sexually transmitted disease or virus without that individual's knowledge
- Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

Confidentiality

Anyone who believes that he or she is the Complainant of sexual misconduct or has witnessed an incident of sexual misconduct whether it occurred on or off campus is encouraged to make a report.

Complainants of sexual misconduct who are not ready to inform the University may contact the psychologists, counselors and nurses at Mercyhurst University's Counseling and Health Services or priests in the office of Mission and Ministry and the resident campus ministers for confidential support. These campus professionals can legally maintain confidentiality, which means no disclosure unless there is an imminent risk to self or others.

All reports of sexual misconduct will be handled in confidence to the extent allowed by law. The information reported will be shared only with those University employees who will assist in aiding the Complainant while conducting the investigation and/or the resolution of the complaint. The University will respect the privacy of all parties involved in a report of sexual misconduct. The student may request confidentiality when reporting an assault to University by requesting that his or her identity be omitted from the report. When a Complainant requests confidentiality, it may limit the University's ability to thoroughly investigate and respond. The request will be reviewed by the Title IX Coordinator in consultation with the Investigative Team.

If the University (Title IX Coordinator) determines that it cannot maintain a Complainant's confidentiality, the University (Title IX Coordinator) will inform the Complainant prior to starting an investigation and will, to the extent possible, only share information with people responsible for handling the University's response. The University will remain ever mindful of the Complainant's well-being, and will take ongoing steps to protect the Complainant from retaliation or harm and work with the Complainant to create a safety plan. A safety plan is tailored for the individual depending on the nature of the circumstances. Retaliation against the Complainant, whether by students or University employees, will not be tolerated. In order to facilitate reporting, the investigative team will grant amnesty to the Complainant and may choose to grant amnesty to witnesses for behavior that otherwise would be considered a violation of University policy (for example consuming alcohol underage or illegal drugs).

Certain campus officials have a duty to report sexual misconduct for federal statistical reporting purposes through The Clery Act. All personally identifiable information is kept confidential, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (on- or off-campus, in the surrounding area, but no addresses are given) for publication in the annual Campus Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Individuals' names or other identifying information are never included in the Security Report.

Resolution

Rights of Complainant and Respondent of sexual assault

1. The right to have any and all alleged violations treated with seriousness, dignity, and confidentiality. This includes an investigation by University officials and/or law enforcement, adjudication, or mediation to bring closure to the incident.
2. The right to be informed of University and community resources, including, but not limited to, the Campus Police and Student Health and Counseling Services.
3. The right to a prompt and equitable resolution to the complaint. All investigations will examine the preponderance of the evidence presented.
4. The right to have an advisor present during all meetings relating to the conduct proceedings.
5. The right, upon request, to have a no-contact order filed prohibiting any communication or contact including but not limited to verbal, written, electronic, or third-party communication.
6. The right, upon request, to review options for academic and/or housing assignment changes.
7. The right to recommend witnesses during a University investigation.
8. Accommodations will be made for the Complainant if they are not comfortable being in the same room as the other party.
9. The right to be notified of the outcome of hearing board proceedings in writing.
10. The right to appeal the finding of a hearing board within the appeal guidelines as defined herein.

There are two types of complaint-resolution mechanisms: a formal complaint process that involves investigation and hearing procedures, and an informal process (available for certain kinds of complaints) that involves less formal types of procedures. Each is described below.

Mediation Options (Informal Complaints) Alternative resolution options—such as mediation, and other processes—may be available in certain situations. These options can be requested by any party who is directly involved or suggested by a hearing officer. These options may be used to avoid escalation of minor conflicts or in place of the formal conduct process in certain situations with the agreement of all involved parties and the Title IX Coordinator’s approval. If the use of informal measures does not result in an agreement, the case will be referred back to the formal process for adjudication.

Be advised that non-consensual sexual intercourse complaints cannot be mediated or addressed through a mediation process.

Formal Complaints Any member of the University community, guest, visitor or other interested party may make a report of an alleged violation of the University’s Sexual and Gender Based Misconduct Policy. Complaints will be submitted to the Title IX Coordinator. While the University is firmly committed to protecting all students from harassment and discrimination in educational programs and activities, failure to file a timely complaint may adversely affect the ability of the University to investigate a complaint. The university is committed to providing all available resources regardless of when a complaint is filed.

Investigation Process

Upon receiving the complaint form, the Title IX Coordinator will begin an investigation or designate an Investigator. The Title IX Investigator will conduct a prompt and thorough investigation, which includes: interviews of parties involved, identifying and interviewing witnesses, gathering and securing all documentation, and identifying other information. The Investigator acts as a neutral party in the investigation and provides a detailed, unbiased report regarding the findings of the investigation.

At any time during the investigation, the Investigator may recommend that interim protections or remedies for the parties involved or witnesses be provided by appropriate University officials. These protections or remedies may

include, but are not limited to, separating the parties, placing limitations on contact between the parties, suspension, making alternative workplace arrangements, or student housing arrangements. Failure to comply with the terms of interim protections may be considered a separate violation of the Student Conduct Code (see Student Handbook).

The investigation will be conducted to ensure the greatest degree of confidentiality of all parties involved. However, the institution's ability to promise confidentiality may be limited by its obligation to remedy the harassment or discrimination. All parties involved in the investigation are encouraged to respect the privacy of others involved in the process. Retaliation against the Complainant, Respondent, or witnesses is strictly prohibited. Proven retaliation by any individual will result in disciplinary action, up to and including expulsion, or other appropriate sanctions (See Non-Retaliation Policy Definition).

The investigation shall be concluded as quickly as feasible and within a reasonable amount of time required to complete the investigation. The investigation will be conducted in a manner that is adequate, reliable, and impartial.

Completion of Investigation Process

Within 60 days of the initial complaint being filed, the Investigator will submit a written report to the Title IX Coordinator, or, if necessary, to the Vice President for Student Life. The report will detail allegations made by the Complainant, summarize the Complainant, Respondent, and witness meetings, and describe the findings of the investigation. However, due to the extensiveness or complexity of the issues of an investigation, more time may be needed to complete a thorough and equitable investigation. In those cases, the Complainant and Respondent will be notified in writing that additional time is required. Lack of cooperation by any witness or party will be noted on the investigation report and will not be a reason to delay the submission of the report to the Title IX Coordinator.

An Investigative Report will be compiled by the investigator, will be maintained in a confidential manner, and will be made available for review by the hearing committee and Complainant and Respondent prior to the hearing. The Investigative Report may include, but is not limited to the following:

- Complainant's statement
- Respondent's statement
- Witness statement(s)
- Investigative Summary
- Pertinent policies
- Other documents utilized by the investigator that are deemed relevant.

The Investigative Report is made up of confidential information. Therefore, the Complainant and Respondent may review the Report, but it will not be copied, and may not be removed by any party. Those reviewing the Investigative Report will be permitted to take notes. When appropriate, identifiable information may be redacted from the report before it is reviewed.

The Complainant and Respondent will meet separately with the investigator to review the Investigative Report. The Complainant and Respondent will review the report and may:

- Request that additional information be added to the report.
- Ask questions or request clarification.
- Recommend additional witnesses to be interviewed.

The Investigator will consider the requests of the Complainant and Respondent and add clarification to the report, add additional information, or interview additional witnesses as deemed reasonable.

If any changes are made to the report the Complainant and Respondent will again review the report. Once the report is reviewed by both parties and no additional changes need to be made as determined by the Investigator, the report will be presented to the hearing panel. The hearing panel may:

- Accept the report.
- Request clarification and ask questions.
- Request that additional information be gathered.

If additional information is requested by the hearing panel the Investigator will gather the information and repeat the above.

Once the Investigative Report is accepted, a hearing will be scheduled.

Hearing Process

In cases where there will be an administrative hearing or a hearing panel, every effort will be made to provide a hearing as soon as feasible following the conclusion of the investigation. Whenever possible, the Complainant and Respondent will be given at least 5 calendar days' notice to prepare for the hearing. The hearing is a closed proceeding and only the Complainant, Respondent, and relevant witnesses are permitted to attend. One advocate (parent, attorney, counselor etc.) may accompany involved individuals, but may not participate at the hearing.

The Complainant's and the Respondent's rights during the hearing process include:

- An explanation of the charges and the available options for remedy,
- Freedom from harassment by the Respondent (or supporters),
- Use of all available internal and external support services in dealing with the aftermath of the offense,
- An explanation of the University discipline system,
- The ability to speak on their own behalf during the proceedings,
- Freedom from having irrelevant sexual history considered during the hearing,
- Information about the outcome of the hearing,
- An opportunity to appeal the outcome of the hearing,
- An opportunity to review the documents and materials presented during the hearing,
- Documents will be redacted, removing the identifiable information of another student, in accordance with FERPA, and
- The right to a non-adversarial hearing in which neither the Complainant nor the Respondent will have the opportunity to ask the other questions. Typically, neither will be present in the room at the same time.

The goals of the hearing are: a) to allow both the Complainant and the Respondent the opportunity to present their experiences, discuss the investigative summary, and to ask questions pertinent to the incident(s) in question; b) to have the matter considered and decided by an impartial panel. This process is intended to determine whether there was a violation of University Policy. It is not a legal procedure.

Standard of Proof

The standard of proof to determine whether a Title IX violation has occurred is a preponderance of the evidence standard. This standard means that the fact finder must determine that it is more likely than not that sexual or gender based misconduct has occurred. This standard is significantly easier to meet than the "reasonable doubt" standard used in criminal cases.

The Hearing Panel

The hearing panel is charged with determining whether a Title IX Policy has been violated and if violated, will provide appropriate sanctions. Whenever feasible, the hearing panel will consist of one chair, and four trained employees. The Complainant and Respondent will be informed of the panel members prior to the commencement of the hearing. A party may challenge a panel member's participation in writing if the party believes that the panelist is acquainted or associated with the case in any way. This written challenge must be received by the Title IX Coordinator within 3 calendar days of the hearing.

The Hearing Procedure

The Hearing Panel will have the opportunity to thoroughly review the investigative report and documentation submitted by the investigator prior to the hearing. The general course of the hearing procedure will be as follows:

- The Complainant and Respondent will be invited to present a brief statement of the facts to the hearing panel, if they so choose (impact statements are not permitted at this time).
- Members of the hearing panel may ask questions of the Complainant and Respondent.
- The Chair will ask for the members of the hearing panel to determine whether any additional clarification or information is needed from the Complainant, Respondent, investigator, or witnesses.
- The hearing panel will go into closed session to determine whether a violation of policy was committed.
- The decision of the hearing panel that a violation occurred or did not occur will be reached by a majority vote utilizing the preponderance of evidence standard ("more likely than not").
- If the Respondent is found to have violated the sexual misconduct policy the hearing board will determine the sanction. The sanction will be based on consideration of the specifics facts of the case itself and relevant factors such as prior disciplinary history.
- The Chair will submit an outcome letter to the Title IX Coordinator within 2 calendar days.
- The Title IX Coordinator meet separately with each party to deliver the outcome of the hearing, explain any sanctions, and inform the students of the appeal process. Both parties will also receive the outcome in writing.

At the completion of the hearing, if it is determined that a Title IX Policy has been violated, the hearing panel will be able to review any impact statement submitted by either the Complainant and/or the Respondent. The impact statement, a written explanation of how the offense has impacted him or her, may be no more than three pages and should be submitted to the Title IX Coordinator at the start of the hearing. The impact statement will ONLY be opened and read if it is determined that a Title IX violation has occurred. Otherwise, the sealed envelope will be returned at the time the written decision in the case is issued.

In cases where the Respondent and/or Complainant have chosen not to participate in the hearing procedure, the panel will commence and hear from the party (if one exists) who has chosen to participate in the process.

Due to the extensiveness or complexity of the issues of an investigation, more time may be needed to complete a thorough and equitable investigation. In those cases, the Complainant and Respondent will be advised in writing that additional time is required.

Administrative Hearing

A complaint may be resolved through an administrative hearing. The administrator is charged with determining whether a Title IX Policy has been violated and if violated, will provide appropriate sanctions. An administrative hearing is only considered if the Title IX Coordinator deems it appropriate, and both parties agree that they would prefer this type of hearing. Please note that either party may request that a hearing panel be provided instead.

Sanctions

If the Respondent is found to have violated Title IX policies, the panel will determine the appropriate sanctions. Consideration may be given to the nature of and circumstances surrounding the violation, prior disciplinary violations, precedent cases, University safety concerns, or any other information deemed relevant by the Title IX Coordinator. The Title IX Coordinator will provide each party with information detailing the sanctioning decision of the panel.

Not all forms of sexual misconduct will be deemed to be equally serious offenses, and the University reserves the right to impose differing sanctions, ranging from a verbal warning to expulsion, depending on the severity of the offense. The University reserves the right to take whatever measures it deems necessary in response to an allegation of sex discrimination in order to protect the individuals' rights and personal safety. Such measures include, but are not limited to:

- Reprimand/warning,
- Modification of living arrangements,
- Counseling assessment,
- Social or disciplinary probation,
- Removal from University housing,
- Suspension,
- Expulsion, and/or
- Arrest and prosecution.

No Further Action

In cases where the investigation does not establish that a violation has occurred, and there are no further avenues to investigate, the case will be closed (i.e. there is not enough evidence to proceed with the investigation at this time). If new evidence is found or submitted, which was not available at the time of the original investigation and is found to be substantial enough to have changed the decision to close the case, the case may be reopened.

In cases where the investigation indicates that no violation of the Title IX policy has occurred, the case will be closed.

Outcome Notification

Every effort will be made to ensure that both the Complainant and Respondent are updated regularly to inform them of important developments and decisions.

At the conclusion of a hearing, both the Complainant and Respondent will be notified in writing to inform them if harassment was found to have occurred or not. In cases where a sanction has been imposed, the sanction will be shared with the Complainant when said sanction directly relates to the harassed student. In cases where the conduct involves a crime of violence or a non-forcible sex offense, Complainants will be notified of the outcome including the sanctions.

Appeal Process

The purpose of the appeal process is to ensure that the policies and procedures of Mercyhurst University are administered in a fair and consistent manner. An appeal is a request to the Vice President of Student Life or designee to review a decision or action. Each party will be notified if the other party files an appeal, and will be provided the opportunity to respond in writing.

The issue in question is not the respondent's original action or incident; rather it is a request for reconsideration of the original decision. When an appeal is heard, the Vice President of Student Life or designee may recommend, eliminate, decrease, increase, modify, or uphold the initial decision or action.

The Complainant and Respondent may appeal: 1) the decision made by the hearing panel or administrator, or 2) the sanctions determined by the panel or administrator. There should be no expectation that an appeal will be successful simply because a party is unhappy with or disagrees with the original decision or action.

The three grounds upon which an appeal of the decision or sanctions may be made are:

1. The individual believes a procedural error occurred, which the individual feels may change or affect the outcome of the decision;
2. The individual has substantive new evidence that was not available at the time of the hearing and that may change the outcome of the decision;
3. The individual feels that the sanction issued as a result of the original decision was disproportionate for the violation, unwarranted or excessive in nature.

The written appeal request should:

- Be submitted within 7 calendar days of receipt of the University's decision to the Title IX Coordinator;
- Include the reasons for the appeal and the requested outcome.

MERCYHURST UNIVERSITY
Title IX – Common Definitions

Advisor: An individual selected by a Complainant or Respondent to assist throughout the University process. An advisor may advise and assist the Complainant or Respondent in preparation for any meetings, interviews, or hearings that may occur; accompany the Complainant or Respondent through all student conduct process meetings, interviews, or hearings; or assist the Complainant or Respondent in preparing an appeal. An advisor may not participate in the student conduct process in any other capacity in reference to the same incident, including, but not limited to, serving as a Witness, Co-Complainant, or Co-Respondent. Advisors may not directly participate or make any type of representation or argument on behalf of a Complainant or Respondent in any aspect of the student conduct process including, but not limited to: meetings, interviews, or hearings. The availability of an Advisor to attend a student conduct process meeting, interview, or hearing shall not unreasonably interfere with or delay the proceedings.

Coercion: Unreasonable pressure for sexual activity. When someone makes it clear that he/she does not want to engage in sexual behavior, or that she/he does not want to go beyond a certain point of sexual interaction, continued pressure beyond that point can be considered coercive.

Consent: Consent is an informed decision made freely and actively through words or actions that demonstrates an affirmative, knowing, and voluntary agreement to engage in a sexual act. The need to obtain consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

Because sexual misconduct is defined as sexual activity that is undertaken without consent, each participant must obtain and give consent to each sexual act. Students are strongly encouraged to talk with each other before and during any sexual interaction. Relying solely on non-verbal communication can lead to miscommunication. Students are strongly advised to avoid any ambiguity in obtaining and giving consent.

Although all parties must give their consent to any sexual act and it is the best practice for both partners to be responsible for confirming that they have obtained the other's consent, it is the responsibility of the person initiating the sexual act to obtain consent from the other.

- Consent is required each and every time there is sexual activity;
- The absence of a verbal "no" does not indicate consent;
- Consent can be withdrawn by any person, at any time, at which point the sexual activity must stop immediately;
- Consent to some levels of sexual activity does not imply consent to all levels of sexual activity. Each new level of sexual activity requires consent (for example, moving from kissing to touching, to touching under clothes, etc);
- The person(s) who initiate(s) a new level of sexual activity is responsible for asking for consent;
- Consent cannot be obtained through the use of fraud or force (actual or implied), whether that force be physical force, threats, intimidation, or coercion (compelling another person to do something through emotional or physical pressure, threats, or other forms of intimidation);
- All parties must have equal freedom and room to choose (for example, if one person does not have a ride back to campus, they may feel "trapped" and unable to fully and honestly give consent)
- A current or previous dating or sexual relationship with the initiator (or anyone else) does not constitute consent;
- Being intoxicated does not diminish one's responsibility to obtain consent;
- Bodily movements and non-verbal responses such as moans are not consent;
- Silence, passivity, or lack of active resistance is not consent;
- Intentional use of alcohol/drugs does not imply consent to sexual activity;
- Seductive dancing or sexy/revealing clothing does not imply consent to sexual activity;

- Use of agreed upon forms of communication such as gestures or safe words is acceptable, but must be discussed and verbally agreed upon by all parties before sexual activity occurs;
- Consent may never be given by minors (in Pennsylvania, those not yet 16 years of age);
- People with mental disabilities cannot give consent to sexual activity if they cannot appreciate the fact, nature, or extent of the sexual situation in which they find themselves.
- This policy also covers someone whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the taking of a so-called “date-rape” drug. Possession, use and/or distribution of any of these substances, including Rohypnol, Ketamine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another student for the purpose of inducing incapacity is a violation of this policy. More information on these drugs can be found at <http://www.911rape.org/>

Cyber-bullying: The use of communications technology to harm, threaten, or otherwise victimize another person. Cyberbullying can take many forms (i.e. offensive texts or instant messages, rumor-spreading emails, videos cruelly mocking other students posted to video-sharing sites, the creation of Facebook pages or Twitter accounts that humiliate other students, and forwarding “sexts,” private messages or intimate images sent from one student to another, to other students or even to the entire school).

Cyber-stalking: A particular form of stalking in which threatening behavior or unwanted sexual advances directed at another person using electronic media such as: web pages, social networks, blogs, cell phones, texts, or other online and computer contact.

Dating Violence: Violence committed by a person who is or has been in a romantic relationship with the victim. Whether there was such a relationship will be gauged by its length, type, and frequency of interactions.

Domestic Violence: Pennsylvania law defines domestic violence as knowingly, intentionally, or recklessly causing bodily injury of any kind, causing fear of bodily injury of any kind, assault (sexual or not sexual), rape, sexually abusing minor children, or knowingly engaging in repetitive conduct toward a certain person (i.e. stalking) that puts them in fear of bodily injury. These acts can take place between family or household members, current or former spouses, sexual partners, or those who share biological parenthood in order to qualify as domestic violence or abuse.

False Reports: The University will not tolerate intentional false reporting of incidents. It is a violation of the Student Code of Conduct to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.

Force: Use of physical violence and/or imposing on someone physically to gain sexual access. Force can also include threats, intimidation (implied threats) and coercion that are used to overcome resistance.

Forced Sexual Intercourse: Unwilling or non-consensual sexual penetration (anal, vaginal or oral) with any object or body part that is committed either by force, threat, intimidation, or through exploitation of another’s mental or physical condition of which the assailant was aware or should have been aware.

Gender-based Harassment: Acts of verbal, nonverbal, or physical aggression, intimidation, stalking, or hostility based on gender or gender-stereotyping constitute gender-based harassment. Gender-based harassment can occur if students are harassed either for exhibiting what is perceived as a stereotypical characteristic for their sex, or for failing to conform to stereotypical notions of masculinity or femininity. In order to constitute harassment, the conduct must be such that it has the effect of unreasonably interfering with an individual’s academic performance or creating an intimidating, hostile, demeaning, or offensive academic or living environment.

Gender-based Misconduct: Comprises a broad range of behaviors focused on sex and/or gender discrimination that may or may not be sexual in nature. Sexual harassment, sexual assault, gender-based harassment, stalking,

and intimate partner violence are forms of gender-based misconduct under this policy. Misconduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Gender-based misconduct can be committed by men or by women, and it can occur between people of the same or different sex.

Good Samaritan: Mercyhurst University views student safety as paramount. In incidents of crisis or medical emergency. Mercyhurst students are expected to care for themselves and for others in the University community by getting help from appropriate officials even when violations of the Conduct Code have occurred. In crisis situations involving alcohol, drugs, and/or sexual misconduct the University strongly considers the positive impact of taking responsible action when determining the appropriate response for alleged policy violations relating to the incident.

Hostile Environment: Harassing conduct that is sufficiently serious - that is severe or pervasive – to deny or limit a student's ability to participate in or benefit from the school's program based on sex. A single instance of rape or other form of sexual misconduct is sufficient to constitute as creating a hostile environment. Both objective and subjective factors are considered in determining whether sexual harassment rises to the level of a hostile environment.

Impact on Education: Unwelcome sexual comments or conduct that denies or limits a student's ability to participate in or benefit from his/her education program.

Impact on Employment: Unwelcome sexual comments or conduct that unreasonably interferes with an employee's work performance or creates an intimidating, hostile, or offensive work environment.

Incapacitation: An incapacitated person cannot give consent. One who is incapacitated as a result of alcohol or other drug consumption (voluntary or involuntary), or who is unconscious, unaware, or otherwise helpless, is incapable of giving consent. One must not engage in sexual activity with another whom one knows (or should reasonably know) to be incapacitated.

The impact of alcohol and other drugs varies from person to person; however, warning signs that a person may be approaching incapacitation may include, but are not limited to:

- loss of balance/inability to walk without stumbling
- slurred speech
- inability to focus their vision
- vomiting
- erratic or extreme behavior
- passing out.

Intimate Partner Violence: Use of physical violence, coercion, threats, intimidation, isolation, stalking, or other forms of emotional, sexual or economic abuse directed towards a partner in an intimate relationship constitute intimate partner violence. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone. Intimate partner violence can be a single act or a pattern of behavior in relationships. Intimate partner relationships are defined as short or long-term relationships (current or former) intended to provide some emotional/romantic and/or physical intimacy.

No Contact Order: A two-way No Contact Order is an accommodation that helps to ensure an environment in which individuals can focus on and pursue their education and/or work. They are intended to forestall future interactions that could be problematic and to protect both of the individuals. No Contact Orders are typically issued for a semester or academic year, but may be modified and/or extended as deemed necessary.

Non-Consensual Sexual Contact: Any intentional sexual touching, however slight with any object or body part, by one person upon another, without consent.

Non-Consensual Sexual Intercourse: Any sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a man or woman upon a man or a woman, without consent.

Non-Retaliation Policy: Members of the Mercyhurst community are encouraged to express displeasure at any conduct which may be sexual harassing or in any other way harassing, to tell individual(s) engaging in the conduct that it is unwelcome and to report that conduct and to use the complaint procedures set forth in this policy.

Mercyhurst University strictly prohibits retaliation against any person for using this reporting procedure, or for filing, testifying, assisting or participating in any manner in any investigation or proceeding involving allegations of sex discrimination. Any person who violates this policy will be subject to discipline, up to and including termination if they are an employee, and/or expulsion if they are a student.

Rape: Sexual intercourse by forcible compulsion or threat of forcible compulsion or where one of the participants lacks the capacity to consent. Compulsion can be use of physical, intellectual, moral, emotional or psychological force, either expressed or implied. It also includes sexual intercourse with a person who is unconscious, incapacitated by alcohol or drugs, underage, mentally challenged, unconscious or asleep.

Sexual Activity: Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice. Intercourse, however slight, means vaginal and anal penetration by a penis, object, tongue, finger, and/or oral copulation (mouth to genital contact or genital to mouth contact).

Sexual Assault: Touching of a sexual nature, including: oral-genital contact, anal intercourse, or vaginal intercourse; anal, oral or vaginal penetration with an object; or other sexual contact that occurs without consent. Any type of sexual contact or behavior that occurs without the explicit consent of the other person or is obtained through the use of force, threat of force, intimidation or coercion.

Sexual Discrimination: Behaviors and actions that deny or limit a person's ability to benefit from, and/or fully participate in the educational programs or activities or employment opportunities because of a person's sex.

Sexual Exploitation: Occurs when a person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses.

Sexual Harassment: Any unwelcome conduct of a sexual nature that includes unwanted sexual advances, requests for sexual favors, and other visual, verbal, non-verbal, or physical conduct of a sexual nature when: (1) submission to such conduct is made a term or condition of employment or the educational relationship; (2) submission to or rejection of such conduct is used as a basis for employment or education decisions affecting the individual; or (3) such conduct has the effect of unreasonably interfering with a student's or employee's work performance or creating an intimidating, hostile, or offensive working, educational, or living environment.

Sexual intercourse: Penetration (anal, oral or vaginal), however slight by another person or with any object by another person, and any sexual contact, however slight, by another person or with any object, by another person.

Sexual Misconduct: Any activity of a sexual nature that violates another individual's physical and/or emotional well-being or personal space without that person's explicit consent. Sexual misconduct incorporates a range of behaviors including rape, sexual assault (which includes any kind of nonconsensual sexual contact), sexual harassment, relationship violence, stalking, and any other conduct of a sexual nature that is nonconsensual, or has the effect of threatening, intimidating, or coercing a person(s). Sexual misconduct occurs when there is a lack of mutual consent about sexual activity.

Stalking: A course of conduct directed at a specific person that would cause a reasonable person to feel fear. Stalking involves repeated and continued harassment made against the expressed wishes of another individual, which causes the targeted individual to feel emotional distress, including fear and apprehension.

Other examples of **prohibited conduct** include, but are not limited to unwelcome occurrences of:

- Sexual propositions or advances;
- Touching, pinching, or patting;
- Insulting or suggestive sounds;
- Comments about a person's body or body parts;
- Emails or other written communication of a sexually suggestive manner;
- Inappropriate displays of a sexual nature;
- Repeated flirtatious or sexual comments;
- Sexually suggestive displays or objects;
- Repeated insults directed against men or women;
- Comments or behaviors which promise benefits for sexual favors;
- Retaliation against an individual for participating in a sexual harassment investigation;
- Sexually suggestive or oriented jokes or gestures directed toward another or sexually oriented or degrading comments about another