

MERCYHURST
UNIVERSITY



Title IX/Discrimination

Employee Information

Respondent Form, Grievance Procedure and Sexual Misconduct Policy

To file a complaint with the University, please complete and bring this form to the Human Resources Office or call to make arrangements for a representative to meet with you. If you are unable to complete this form and would like to make a verbal complaint, please call the Human Resources Office to schedule an appointment.

Although the University cannot commit to keeping a complaint of discrimination confidential because of the University's obligation to investigate the complaint, the University will use its best efforts not to disseminate information concerning the complaint beyond those who have a need to know.

Please feel free to contact the Human Resources Office if you have any questions regarding the process for filing or investigating complaints of sex discrimination.

Please Note: All employees have a duty to immediately report, to the Title IX Coordinator, information related to sexual harassment, except those employees who have been exempt from sharing such information by virtue of their position at the University.

Individuals should report any instance of sexual misconduct before conduct becomes severe or pervasive, so the University can take the necessary steps to prevent the harassment from creating a hostile environment.

If Mercyhurst is made aware of any sexual misconduct or harassment, immediate action will be taken to eliminate the hostile environment, prevent its reoccurrence and address its effects.

MERCYHURST UNIVERSITY
Title IX – Respondent Form

A complaint has been filed against you for an alleged violation of the Mercyhurst University Title IX Policy. Please fill out the form below to help us resolve this issue.

Sex Discrimination – any behaviors and/or actions that deny or limit a person’s ability to benefit from, and/or fully participate in the educational programs, activities or employment opportunities because of a person’s sex.

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 Misconduct - encompasses any sexual behaviors that violate Mercyhurst University’s Code of Conduct and/or Title IX Policy. In general, any nonconsensual physical contact of a sexual nature may constitute Sexual Misconduct.

University Status: (Circle one or more that apply to you)

Administrator	Student	Staff
Employment Applicant	Prospective Student	Other (Please Explain)
Faculty Member	Graduate Student	_____

Name _____ Date _____

Department _____

Work Number _____ Home Number _____ Cell Number _____

Home Address _____ City _____ State _____ Zip _____

Employee I.D. Number _____ Student I.D. Number _____

MERCYHURST UNIVERSITY
Title IX – Sexual Misconduct Policy

Mercyhurst University policy prohibits sexual harassment against any staff members, applicant, student, administrator, faculty member or third-party vendor. Respect for the dignity and work of each individual is a precept 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:

Employment decisions
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 designated by the Administration to serve in that capacity

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 their actions.

The University's primary concern is student and employee safety.

MERCYHURST UNIVERSITY
Title IX – Grievance 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 grievance should be filed as soon as possible after the incident. The complaint should be filed in writing by utilizing the "Title IX Complaint Form." Forms may be obtained from the Human Resources Department. Supplemental sheets may be attached to provide additional detail regarding the alleged violation. The completed "Title IX Complaint Form" and any supplemental attachments should be submitted to any of the following:

Tina Fryling
Deputy Title IX Coordinator for Employees
Preston 122
814-824-2352

Jim Tometsko
Director of Human Resources
Preston 4B LL
814-824-3810

Initial Considerations

Support Services

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

- Mercyhurst University employees may reference the Employee Handbook for information regarding counseling options.
- *Medical Assistance:*

Urgent Care – UPMC Hamot 7200 Peach Street – Erie, PA 16509 (814) 860-3301 Monday – Sunday: 9a.m. – 9p.m. No appointment necessary No emergency co-pay	Urgent Care – Saint Vincent 4950 Buffalo Road – Erie, PA 16510 (814) 898-2576 Monday – Friday: 10a.m. – 8p.m. Saturday – Sunday: 10a.m. – 5p.m. No appointment necessary	
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- *Off Campus Resources:*

Crime Victim Center 125 West 18th Street - Erie, PA 16501 (814) 455-9414 or (800) 352-7273 jeffrey.clorley@cvcerie.org	Erie Police Department 626 State Street - Erie, PA 16501 (814) 870-1125	
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- *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: *Meredith Bollheimer, (814) 824-3363.*
- *Remedies and Reassignments:* At any time during the process, the Title IX Coordinator/Deputy Title IX Coordinator/Investigator/Director of Human Resources 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 work in proximity to one another, either party may request a fair and immediate interim remedy.

In certain circumstances, it may be necessary to impose a temporary suspension from work immediately pending a full investigation. The 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.

Procedure

Any employee, student, or third party who feels that he or she has been made a victim of sexual or unlawful harassment by an employee or third party, or any employee who has observed sexual or unlawful harassment of a member of the community by an employee or third party, should contact the Human Resources Office or the Deputy Title IX Coordinator to report the situation. The contact information for the Deputy Title IX Coordinator for employees can be found in the University's Non-Discrimination notice. Upon receiving a formal written complaint of the incident(s), the Deputy Title IX Coordinator for employees, and/or the designated investigator will promptly investigate allegations of sexual or unlawful harassment by employees and third parties. Absent a formal written complaint, the Title IX Coordinator for employees will attempt to work with the parties on an informal resolution.

The Deputy Title IX Coordinator for employees will prepare a written report of the findings of the investigation and present those to the appropriate Vice President and to the Director of Human Resources. The Deputy Title IX Coordinator for employees will work in conjunction with the appropriate Vice President, and the Director of Human Resources to determine the appropriate corrective action to be taken, if it is determined that a violation of the sexual harassment policy has taken place.

Anyone alleging a complaint of sexual or unlawful harassment need not report such harassment directly to any individual who is alleged to have engaged in such harassment. If the reporting requirements of this section would require an individual to report the complaint of unlawful harassment to an individual who is the subject of the complaint, the employee shall report the complaint directly to the Deputy Title IX Coordinator or the Director of Human Resources or another member of management who is not the subject of the complaint.

The right to confidentiality, both of the complainant and of the accused, will be respected consistent with Mercyhurst University's legal obligations and with the necessity to investigate the allegations of misconduct and take corrective action where this conduct has occurred.

Any supervisor or manager who becomes aware of possible sexual or unlawful harassment shall promptly advise the Deputy Title IX Coordinator and the Director of Human Resources who will handle the matter in a timely and confidential manner. Mercyhurst University aims to conclude investigations within 60 days of the filing of the initial complaint, with an understanding that there may be special circumstances (timing of breaks, scheduling witnesses, etc.) which make this 60 day timeframe unrealistic.

Anyone engaging in sexual or other harassment will be subject to disciplinary action, up to and including termination of employment. Where a hostile working environment has been found to exist, the University will take all reasonable steps to eliminate the conduct creating that environment.

Information Dissemination

Once the case is closed and complete, the following steps will be taken:

- The packet will be reviewed to make sure that all information is complete,
- A summary of the complete packet will be printed and filed,
- The complete packet will be sent to the Title IX Coordinator, and
- The complete packet will be entered into the database in order to have an electronic copy.

- Hard copies of the files will be kept in a secure location by the Title IX Coordinator, in accordance with the University Records Retention policy.

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 an investigation, 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 party. 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.

MERCYHURST UNIVERSITY Title IX – Common Definitions

Consent:

- Consent is informed, freely and actively given and requires clear communication between all persons involved in the sexual encounter.
- Consent is active, not passive. Consent can be communicated verbally or by actions. But in whatever way consent is communicated, it must be mutually understandable. Silence, in and of itself, cannot be interpreted as consent.
- It is the responsibility of the initiator of sexual contact to make sure they understand fully what the person with whom they are involved wants and does not want sexually.
- Consent to one form of sexual activity does not imply consent to other forms of sexual activity.
- Previous relationships or consent does not imply consent to future sexual acts.
- Consent cannot be procured by use of physical force, compelling threats, intimidating behavior, or coercion. Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another.
- Effective consent cannot be given by minors, mentally disabled individuals or person's incapacitated as a result of drugs or alcohol.
- If you have sexual activity with someone you know to be--or should know to be—mentally or physically incapacitated (by alcohol or other drug use, unconsciousness or blackout), you are in violation of this policy. Incapacitation is a state where one cannot make a rational, reasonable decision because they lack the ability to understand who, what, when, where, why or how of their sexual interaction.
- 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, Ketomine, 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/>
- Use of alcohol or drugs will never function to excuse behavior that violates this policy.

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.

Cyberbullying: 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).

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.

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.

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) between persons intended to provide some emotional/romantic and/or physical intimacy.

Non-Consensual Sexual Contact: Any intentional sexual touching, however slight with any object or body part, by a man or a woman upon a man or a woman, 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.

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 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 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 Misconduct: Encompasses any sexual behaviors that violate Mercyhurst University's Code of Conduct and/or Title IX Policy. In general, any nonconsensual physical contact of a sexual nature may constitute Sexual Misconduct. Sexual Misconduct may vary in its severity and consists of a range of behaviors or attempted behaviors that may be grounds for student conduct action under University policy.

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;
- 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.

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.

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.