

Marywood University

Policies and Procedures

Title IX Sexual Harassment and Community Standards Sexual Misconduct Policy

I. Policy Statement:

Marywood University (the “University”) “honors the uniqueness and dignity of each human person” (Core Values of Marywood University, Respect). The University declares and affirms a commitment to maintaining a comfortable, healthy, and safe learning, living, and working environment for all members of the Marywood Community. Marywood does not condone and will not tolerate sexual discrimination or sexual violence of any kind, including, but not limited to, rape, domestic violence, dating violence, sexual assault, stalking, sexual exploitation, harassment based on sex, sexual activity for which there is no consent, or any other misconduct that may violate this Title IX Sexual Harassment and Community Standards Sexual Misconduct Policy, including hazing, bullying, and cyberbullying, if it is sex/gender-based.

Marywood University is subject to Title IX of the Educational Amendments of the 1972 (“Title IX”), 20 U.S.C. §§1681, et seq., which states that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” Marywood University does not discriminate on the basis of sex and will not tolerate sexual misconduct in any form, including as defined by Title IX or Marywood University’s Community Standards. Inquiries concerning the application of Title IX may be directed to the Title IX Coordinator, a Deputy Title IX Coordinator for the University, or to the Assistant Secretary for the Office of Civil Rights of the United States Department of Education (see below for contact information). Marywood University’s complete notice of Non-discrimination is available on the Marywood Policies page.

Marywood University is committed to taking all necessary steps to comply with any obligations it may have under Title IX of the Education Amendments Act of

1972, Title VII of the Civil Rights Act of 1964, as amended, and the Campus Sexual Violence Elimination (Campus SaVE) Act of 2013. These are explicit civil and legal applications of the formulation of beliefs already cherished in Marywood's religious commitment, objectives, and practices.

Marywood University's *Title IX Sexual Harassment and Community Standards Sexual Misconduct Policy* ("Policy") applies to all faculty, staff, administration, employees, students, volunteers, and visitors on campus property. Additionally, the Policy applies to the conduct of all faculty, staff, administration, employees, students, volunteers, and visitors at off-campus University-sponsored events, including, but not limited to, academic and educational programming, internships, athletic events, and all other University programming, as well as to the conduct of all faculty, staff, administration, employees, students, volunteers, and visitors occurring off-campus but having an effect on the University's educational program or activity.

Alleged misconduct subject to this Policy ("Prohibited Conduct") includes both Title IX Sexual Harassment (which is defined by law) and Community Standards Sexual Misconduct (which includes allegations that do not meet the definitions under Title IX, but nonetheless violate Marywood University community standards, as discussed further in the Definitions (Section IV) below. Marywood University will process all complaints reported under this Policy regardless of where the conduct occurred to determine whether the conduct occurred in the context of its educational program or has continuing effects on campus or in an off-campus program or activity. Anyone believing they have been the victim of, or a witness to, or otherwise has reason to believe or become aware of conduct that may be in violation of this Policy by, or involving, any member of the University community, guests, or visitors on University property, any property controlled by the University, including off-campus University sponsored events should report the incident as soon as possible to the Title IX Coordinator or one of the Deputy Title IX Coordinators. Marywood University will take the steps necessary to stop any and all misconduct, prevent its reoccurrence, and correct its discriminatory effects on the complainant and others.

II. Preservation of Evidence:

The preservation of evidence in incidents of sexual violence is critical and particularly time- sensitive. It is important for the complainant to be aware of the importance of preserving evidence by taking the following actions:

1. Seek medical assistance at the hospital, ideally within 72 hours of the incident.
2. Do not shower, bathe, wash hands or face, or douche.
3. Try not to urinate.
4. If oral contact took place, refrain from smoking, eating, drinking, or brushing teeth.
5. If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence).

During the initial meeting between the complainant and the University Title IX Coordinator or Deputy Title IX Coordinator, the importance of taking those actions will be reiterated, when relevant.

III. TITLE IX AND THE TITLE IX COORDINATOR:

The following individuals are responsible for coordinating Marywood University's efforts to comply with Title IX and this Policy:

Dr. Yerodin Lucas, Executive Director of Institutional Equity & Inclusion
Title IX Coordinator | 504 Coordinator

Ylucas@marywood.edu

Liberal Arts Center Room 218

(570) 340-6042

Dr. Ross Novak, Dean of Students

Deputy Title IX Coordinator

rnovak@marywood.edu

Liberal Arts Center, Room 101

(570) 348-6246

Ms. Kimberly Padden, Director of Human Resources

Deputy Title IX Director

kpadden@marywood.edu

Liberal Arts Center, room 86

(570) 961-4549

Ms. Nicole Malloy, Assistant Director Athletics
Deputy Title IX Coordinator- Athletic Complaints
malloy@marywood.edu

Marywood Center for Athletics and Wellness, Room 207
(570) 340-2489

Please contact any of the above with questions regarding Title IX or this Policy.

Questions may also be directed to:

Assistant Secretary for Civil Rights

U.S. Department of Education Office of Civil Rights

400 Maryland Avenue, SW

Washington, D.C. 20202-1100

Telephone: 800-421-3481

Email: OCR@ed.gov

IV. Definitions:

Terms used in this policy have the following meanings:

Advisor: An Advisor is a person who has agreed to provide support and advice to a Complainant or Respondent, subject to the provisions of Section X(C).

Appeal Officer: The individual(s) responsible for determining an appeal under Section XII. The Appeal Officer may be Marywood's employee or an external contractor. The Appeal Officer will not be Marywood's Title IX Coordinator, nor the investigator or Hearing Officer who was assigned to the matter that is the subject of the Appeal.

Community Standards Sexual Misconduct: Community Standards Sexual Misconduct includes conduct by an individual or a recognized student organization that does not constitute Title IX Sexual Harassment, or is not subject to the filing of a Formal Complaint as Title IX Sexual Harassment because the Complainant is not participating or attempting to participate in Marywood University's education program or activity, but that (a) has continuing adverse effects on or creates a hostile environment for individuals participating or attempting to participate in Marywood University's education program or

activity, or otherwise has a reasonable connection to Marywood University; and (b) constitutes one of the following:

- Community Standards Sex Discrimination
- Discrimination on the basis of sex
- Community Standards Sexual Harassment: Conduct on the basis of sex that involves an employee of Marywood conditioning the provision of an aid, benefit, or service of Marywood on an individual's participation in unwelcome sexual conduct; or an individual engaging in unwelcome conduct determined by a reasonable person to be so severe, pervasive or objectively offensive that it effectively denies a person equal access to Marywood's education program or activity.
- Community Standards Sexual harassment also includes the following;
 - Community Standards Sexual Assault: Penetration or attempted penetration, no matter how slight, of the vagina or anus with any body part, or object, or oral penetration or attempted penetration by a sex organ of another person, without the consent of the alleged victim.
 - Community Standards Fondling: The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the alleged victim.
 - Community Standards Incest: Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - Community Standards Statutory Rape: Non-forcible sexual intercourse with a person who is under the statutory age of consent.
 - Community Standards Dating Violence: Violence, including sexual or physical abuse or the threat of such abuse, committed by a person (a) who is or has been in a social relationship of a romantic or intimate nature with the alleged victim; and (b) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship, (ii) the type of relationship, and (iii) the frequency of interaction between the persons involved in the relationship.
 - Community Standards Domestic Violence: Violence committed by a current or former spouse or intimate partner of the alleged victim, by a person who is cohabitating with or has cohabitated with the

alleged victim or spouse or intimate partner, by a person similarly situated to a spouse of the alleged victim under the domestic or family violence laws of Pennsylvania, or by any other person against an adult or youth alleged victim who is protected from that person's act under the domestic or family violence laws of Pennsylvania.

Community Standards Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress. For purposes of this definition, (a) course of conduct means two or more acts, including, but not limited to, acts in which the alleged stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property; (b) reasonable person means a reasonable person under similar circumstances and with similar identities to the victim; and (c) substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Community Standards Sexual Exploitation: Sexual Exploitation, defined as, taking non-consensual or abusive sexual advantage of another for one's own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute another form of Community Standards Sexual Harassment under this policy.

Complainant: An individual who is alleged to be the victim of Prohibited Conduct.

Consent: A knowing, voluntary and mutual decision among participants to engage in sexual activity, as discussed further in Section VI.

Formal Complaint: A document submitted by a complainant and bearing the Complainant's physical or digital signature, or otherwise indicating that the Complainant is the one filing the Formal Complaint, requesting that Marywood University investigate the allegations of Prohibited Conduct. The Title IX Coordinator also may sign a Formal Complaint, as discussed in Section X, but does

not become the Complainant by doing so. In order to file a Formal Complaint for Title IX Sexual Harassment, a Complainant must be participating in or attempting to participate in Marywood's education program or activity at the time a Formal Complaint is filed.

Hearing Officer: The individual responsible for conducting the Hearing under Section XI (D), reaching a decision on responsibility and assigning sanctions, if appropriate. The Hearing Officer may be Marywood University's employee or an external contractor. The Hearing Officer shall not be Marywood's Title IX Coordinator, nor the investigator who investigated the matter that is the subject of the Hearing.

Informal Resolution Facilitator: The individual responsible for facilitating Informal Resolution, as discussed in Section X (D). The Informal Resolution Facilitator may be Marywood University's employee or an external contractor.

Investigator: The individual responsible for conducting in the investigation of alleged Prohibited Conduct, as discussed in Section XI (A). The investigator may be Marywood University's employee or an external contractor. The Title IX Coordinator may serve as the Investigator.

Party or Parties: Party refers to a Complainant or a Respondent. Parties refers to Complainant and Respondent collectively.

Prohibited Conduct: Prohibited Conduct includes Title IX Sexual Harassment and Community Standards Sexual Misconduct.

Respondent: An individual who has been reported to have engaged in any form of Prohibited Conduct or an organization that has been reported to have engaged in Community Standards Sexual Misconduct.

Jurisdiction: In order to constitute Title IX Sexual Harassment, the alleged misconduct must have occurred (i) in the United States, and (ii) in Marywood University's education program or activity, which is defined as locations, events or circumstances over which Marywood University exercised substantial control over both Respondent and the context in which the misconduct occurred, or any

building owned or controlled by a student organization officially recognized by Marywood University.

V. Procedures:

Retaliation against an individual for participating in any way in a report, investigation, hearing or other proceeding under this Policy is strictly prohibited. No one may intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy. In evaluating whether retaliation has occurred, Marywood University may consider whether the conduct in question constituted the exercise of rights protected under the First Amendment or was covered by another Marywood University Policy, including with respect to freedom of expression or academic freedom.

VI. Consent:

A person who wants to engage in a specific sexual activity is responsible for obtaining consent for that activity. Silence or lack of resistance, in and of itself, does not constitute consent. Consent can be given by words or actions, provided that those words or actions clearly communicate willingness to engage in the sexual activity. Consent cannot be obtained through coercion. For purposes of this Policy, coercion is the use of threats (i.e., words or actions) or intimidation (i.e., implied threats) that would cause a reasonable person to engage in unwelcome sexual activity against their will. Consent cannot be obtained from an individual who is incapacitated, where a reasonable, sober person initiating sexual activity would have known or reasonable should have known that the individual was incapacitated. An individual who is under the influence of alcohol and/or drugs may be incapacitated, and therefore unable to consent. However, consumption of alcohol or other drugs alone is insufficient to establish incapacitation. Incapacitation is a state beyond drunkenness or intoxication, where an individual cannot make a knowing and deliberate choice to engage in the sexual activity. Individuals who are asleep, unresponsive or unconscious are incapacitated. Other indicators that an individual may be incapacitated include, but are not limited to, the inability to communicate coherently, inability to dress/undress without assistance, inability to walk without assistance, slurred

speech, loss of coordination, vomiting, or inability to perform other physical cognitive tasks with out assistance. An individual also may be incapacitated due to a temporary or permanent physical or mental health condition. Consent may be withdrawn by any party at any time. An individual who seeks to withdraw consent must communicate, through clear words or actions, a decision to cease the sexual activity. Consent is automatically withdrawn when a party is no longer capable of consenting. Once consent is withdrawn, the sexual activity must cease immediately. Consent must be re-established before resuming any sexual activity. Consent to one form of sexual activity does not, by itself, constitute Consent to another form of sexual activity. Consent to sexual activity on one occasion does not constitute Consent to sexual activity on other occasions. An individual's use of alcohol or drugs does not diminish that individual's responsibility to obtain consent.

VII. REPORTING:

Any person may report conduct constituting possible Prohibited Conduct to the Title IX Coordinator in person, by mail, by telephone, by email or online. The Title IX Coordinator will promptly contact the Complainant to discuss the availability of Supportive Measures (see Section IX) and to explain the process for filing a Formal Complaint. Complainants are encouraged, but not required, to proceed with a Formal Complaint. If the Complainant desires to proceed with a Formal Complaint, the Title IX Coordinator or designee will begin the Formal Complaint Processes (see Section XI). If the Complainant decides not to submit a Formal Complaint, the Title IX Coordinator may sign a Formal Complaint when the Title IX Coordinator deems doing so necessary to address the possible Prohibited Conduct, including in order to provide a safe and nondiscriminatory environment for all members of Marywood University's community. In deciding whether to sign a Complaint if the Complainant elects not to do so, the Title IX Coordinator may, but is not required to, consider factors such as whether the conduct alleged included threats, violence, serial predation or weapons. A complainant is not required to submit a Formal Complaint in order to receive supportive measures.

A. Anonymous Reporting: With the exception of Officials with Authority and Responsible Employees, discussed in Section VII (B), any individual may anonymously report allegations of Prohibited Conduct by submitting a report through Marywood University's anonymous reporting hotline on the

Whistleblower Policy Depending on the information provided, Marywood University's ability to act in response to an anonymous report may be limited.

B. Reports to Officials with Authority and Responsible Employees: There may be instances when an individual discloses alleged Prohibited Conduct an employee of Marywood University. Whether that disclosure constitutes actual notice to Marywood University, triggering its response obligations under this Policy, depends on the role of the employee to whom the disclosure is made, as follows:

1. **Officials with Authority:** A disclosure or report of Prohibited Conduct made to an Official with Authority (regardless of whether the disclosure is made by the Complainant or a third party) constitutes a report to Marywood (i.e., actual knowledge), triggering a response under this Policy. All Officials with Authority are required to promptly report disclosures of Prohibited Conduct to the Title IX Coordinator, including all information that has been disclosed to the Employee, such as the names of those involved, the location of the incident, the alleged Prohibited Conduct, etc. The following individuals are Officials with Authority:
 - A. Title IX Coordinator
 - B. Deputy Title IX Coordinator
 - C. Dean of Students
 - D. Director of Human Resources
 - E. Director of Student Success or Designee
 - F. Director of Student Disability Services
 - G. Director of Housing and Residence Life
- **Responsible Employees:** A disclosure or report of Prohibited Conduct made to a Responsible Employee (regardless of whether the disclosure is made by the Complainant or a third party) does not constitute a report to Marywood University (i.e., is not "actual knowledge") triggering a response under this Policy. Marywood University, as a matter of policy, requires Responsible Employees to promptly report disclosures of Prohibited Conduct to the Title IX Coordinator or Deputy Title IX Coordinator, including all information that has been disclosed to the Responsible Employee, such as the names of those involved, the location of the incident, the alleged

Prohibited Conduct, etc. The following individuals are Responsible Employees:

- i. All faculty members
- ii. All staff and administration members (except when serving in the capacity as designated confidential resources (e.g. student health services))
- iii. All students and employees, even if not Officials with Authority or Responsible Employees are strongly encouraged to report instances of possible Prohibited Conduct to the Title IX Coordinator or Deputy Title IX Coordinator.

C. Privacy and Confidentiality:

Marywood University respects the privacy of individuals involved in any report of alleged Prohibited Conduct, meaning the Title IX Coordinator and others responsible for carrying out this policy will disclose information only as required to implement this Policy or by law. If a Complainant requests that a report of Prohibited Conduct remain confidential. (i.e., with the Complainant's identity not being disclosed to the Respondent and an investigation not being commenced) , the Title IX Coordinator will evaluate that request in the context of Marywood University's responsibility to provide a safe and nondiscriminatory environment for all members of the community. Marywood University may question an employee respondent about alleged Prohibited Conduct without disclosing the identity of the Complainant, provided that it does not take disciplinary action against that respondent without implementing the Formal Complaint processes in Section X. The Complainant is not required to file a Formal Complaint to receive Supportive Measures (See Section IX). But there may be instances when disclosing the Complainant's identity is necessary to provide certain Supportive Measures (e.g. where the Respondent would need to know the identity of the Complainant in order to comply with a no-contact order). Marywood University will maintain as confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair its ability to provide the Supportive Measures.

Only certain professionals at Marywood University are legally required to keep information shared by an individual truly confidential, without reporting it to the

Title IX Coordinator. Those confidential resources and support services are discussed further in Section XV.

D. False Reports and other False Information:

The submission of knowingly false information is prohibited and will be addressed under Marywood University's Code of Conduct for students and employment policies for faculty and staff. This provision does not apply to reports made and other information submitted in good faith, even if the facts alleged are not substantiated by an investigation and/or Hearing decision.

VIII. Emergency Removals:

If at any point following the receipt of a report of Prohibited Conduct Marywood University determines that the respondent posed an immediate threat to the physical health or safety of the Complainant or any other person(s), including the Respondent, Marywood University may temporarily remove the Respondent from any or all of its programs or activities. The imposition of an Emergency Removal does not suggest a finding of responsibility for any Prohibited Conduct. Before imposing an Emergency Removal, the Marywood University's Behavioral Intervention Team (BIT) will undertake an individualized safety and risk analysis concerning the Respondent at the request of the Title IX Coordinator. An Emergency Removal will be imposed only if the BIT concludes that the threat to physical health or safety arises from the allegations of Prohibited Conduct and warrants the removal. An Emergency Removal may involve the denial of access to some or all of Marywood University's campus facilities, academic program, or other programs or activities. While Marywood University may provide alternative academic or employment opportunities during an Emergency Removal, it is not required to do so. Nonpunitive actions taken as Supportive Measures (e.g., changes in housing) do not constitute Emergency Removals.

The Title IX Coordinator will notify the Respondent of the terms imposed in connection with an Emergency Removal. The Respondent has the opportunity to challenge the Emergency Removal upon receipt of that notice. In order to challenge the Emergency Removal, Respondent shall submit an appeal to the Dean of Students or Director of Human Resources for employees within (3) three calendar days from the date of the notice of Emergency Removal, explaining why Emergency Removal is not appropriate. In evaluation the appeal, the Title IX

Coordinator may seek additional information from Respondent or any other individual. The Emergency Removal will remain in place while the appeal is pending. The Title IX Coordinator shall issue a decision as soon as possible under the circumstances. The decision is final and not subject to further appeal. Separate from the Emergency Removal process, the Title IX Coordinator may request that the Director of Human Resources place an employee-Respondent on an administrative leave, with or without pay.

IX. Supportive Measures:

Supportive Measures are non-disciplinary, non-punitive individualized services may be provided to Complainants or Respondents upon request, when deemed by the Title IX Coordinator to be appropriate and reasonably available. Supportive Measures may also be imposed at the initiative and in sole discretion of the Title IX Coordinator. Supportive Measures are available beginning at any time after the submission of a report of Prohibited Conduct. A Complainant may seek and be provided Supportive Measures are designed to restore or preserve equal access to Marywood University's educational programs and activities, without unreasonably burdening the other party. Supportive Measures may be of any duration and may be modified at the discretion of the Title IX Coordinator, as circumstances warrant. Supportive Measures will be kept confidential to the extent doing so does not impair Marywood University's ability to provide them. Supportive Measures may include, but are not limited to, the following:

- Access to counseling services;
- Extensions of deadlines or other course-related adjustments;
- Modification of work or class schedules;
- Mutual restrictions on contact between the parties (i.e., "no contact orders");
- Changes in work or housing locations;
- Leaves of absence;
- Increased security and monitoring of certain areas; or
- Any other measures deemed appropriate by the Title IX Coordinator to preserve equal access to Marywood's programs and activities.

A student or employee's failure to abide by the terms of any Supportive Measure may result in discipline and, depending on the circumstances, could be deemed to constitute retaliation.

X. FORMAL COMPLAINT PROCESS:

In order to commence Formal Complaint Processes, a Complainant must file a Formal Complaint with the Title IX Coordinator. Alternatively, if the Title IX Coordinator has received a report of Prohibited Conduct, but the Complainant elects not to submit a Formal Complaint or the Complainant is unknown, the Title IX Coordinator has the discretion to sign the Complaint if the Title IX Coordinator deems doing so necessary to address Prohibited Conduct, including in order to provide safe and nondiscriminatory environment for all members of its community. In doing so, the Title IX Coordinator does not become the Complainant. There is no time limit within which a Complainant must file a Formal Complaint. However, at the time a Formal Complaint for Title IX Sexual Harassment is filed, the Complainant must be participating or attempting to participate in Marywood University's programs or activities.

Pursuing a Formal Complaint does not preclude a Complainant from pursuing the filing of criminal charges. However, it is important to understand that the standard for criminal prosecution is different from that used in student and employee conduct proceedings. As a result, decisions rendered in either forum are not determinative of what will happen in the other. If the Title IX Coordinator receives Formal Complaints against more than one Respondent or by more than one Complainant against one or more Respondents, or by one Party against the other Party (i.e., "counterclaims"), where the allegations of sexual harassment arise out of the same facts or circumstances and are so intertwined that the allegations directly relate to all of the Parties, the Title IX Coordinator has the discretion to consolidate the Formal Complaints. If Formal Complaints are consolidated, all Parties must receive the same version of the written determination.

A. A written notice upon submission of a Formal Complaint, the Title IX Coordinator will provide written notice to the Complainant and Respondent, if known, including:

- A copy of this policy.
- Notice of the allegations of conduct that may constitute Prohibited Conduct, with sufficient detail for the Respondent to prepare a response before any

initial interview, including, if known, the identities of the Parties involved and the date and location of the incident.

- The presumption that the Respondent is not responsible for the alleged Prohibited Conduct unless a determination of responsibility is reached at the conclusion of the Formal Resolution Process.
- Notice of the Parties' entitlement to an advisor of choice at any meeting, interview, or other proceeding related to the Formal Complaint, as discussed in Section X (C).
- The identity of the Investigator as described in Section XI (A).
- Notice that the Parties may inspect and review evidence gathered during the investigation as discussed in Section XI (B).
- Notice that Marywood University's Code of Conduct prohibits knowingly making false statements or knowingly submitting false information during the Formal Complaint Processes. If additional allegations of conduct that might constitute Prohibited Conduct are identified during the course of the investigation and will be included in the Formal Complaint Processes, the Title IX Coordinator will issue an updated notice.

B. Dismissal for purposes of the Title IX Sexual Harassment if any of the following circumstances are met, the Title IX Coordinator will dismiss the Formal Complaint for purposes of any form of Title IX Sexual Harassment:

- Even if proved, the misconduct alleged in the Formal Complaint would not constitute Title IX Sexual Harassment as defined in Section IV;
- The misconduct alleged in the Formal Complaint did not occur in Marywood University's education program or activity, which is defined as locations, events, or circumstances over which Marywood University exercised substantial control over both Respondent and the context in which the misconduct occurred, or any building owned or controlled by a student organization officially recognized by Marywood University or;
- The misconduct alleged in the Formal Complaint is not alleged to have occurred in the United States.

Further, if any of the following circumstances are met, the Title IX Coordinator may dismiss the Formal Complaint for purposes of any form of Title IX Sexual Harassment, in the Title IX Coordinators sole discretion.

- Complainant notifies the Title IX Coordinator in writing that Complainant wishes to withdraw the Formal Complaint or any allegation in it;
- Respondent is no longer enrolled or employed at Marywood University; or
- Specific circumstances prevent Marywood University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegation.

The Title IX Coordinator will promptly send notice of the dismissal, including the reasons for dismissal, to the Complainant and Respondent via email. The notice will advise the parties whether the Formal Complaint will proceed as possible.

Community Standards Sexual Misconduct:

Both the Complainant and respondent may appeal any decision to dismiss the Formal Complaint for purposes of Title IX Sexual Misconduct by submitting a request for appeal to the Title IX Coordinator by email within three (3) calendar days of the date of the Title IX Coordinator's email. The appeal will be determined using the procedures set forth in Section XII. The decision whether the matter will proceed as potential Community Standards Sexual Misconduct is not subject to appeal.

C. Advisors:

The parties are entitled to identify an Advisor of their choice, who may accompany them all to investigative interviews, Hearings, and other meetings or proceedings held in connection with a Formal Complaint (Formal Complaint Processes Proceedings). An Advisor is a person who has agreed to provide support and advice to a Complainant or Respondent. The Parties are responsible for identifying their own advisor, if they wish to have one as discussed in Section XI the Parties must have an Advisor for purposes of conducting cross-examination at a Hearing. If a Party has not identified an Advisor to accompany them to the Hearing for purposes of conducting cross examination, Marywood University will provide one for that limited purpose.

Except when conducting cross-examination as discussed in Section XI(D), Advisors may not speak aloud during any Formal Complaint Process Proceedings, including by addressing anyone other than the individual for whom they are an Advisor. The Advisor may confer with the individual whom they are advising quietly or by means of written notes. Parties may request a brief recess to consult with their Advisor, which may be granted at the sole discretion of the

Hearing Facilitator conducting the Formal Complaint Process Proceeding. An Advisor whose presence is deemed at that Hearing Facilitator's sole discretion to be improperly disruptive or inconsistent with Rules of Decorum established by Marywood University as discussed in Section (X) will be required to leave and may be prohibited from participating in future Formal Complaint Process Proceedings. While Marywood University may consider short delays in scheduling to reasonably accommodate an Advisor's availability, whether to grant such a request is in the sole discretion of the Hearing Facilitator responsible for the event in question.

D. Informal Resolution:

Informal Resolution presents the opportunity for the Complainant and Respondent to resolve allegations of Prohibited Conduct without an investigation or hearing. Participation in Informal Resolution in lieu of the Formal Resolution Process is purely voluntary. Informal Resolution is available only when a Formal Complaint has been filed and the Parties agree to its use in writing. Informal Resolution may be used only with the approval of the Title IX Coordinator, who may deem its use inappropriate based on the specific allegations involved or other factors. Informal resolution is not available to resolve a student-Complainant's allegation that an employee has engaged in Title IX Sexual Harassment. Prior to initiating Informal Resolution, the Title IX Coordinator will provide the Parties with written notice disclosing the allegations, the requirements of the process, the right to withdraw from Informal Resolution to pursue formal resolution, and any consequences of participation (e.g., as it relates to any subsequent formal resolution if Informal Resolution is not achieved). Informal Resolution can be commenced at any point prior to the conclusion of a Hearing under the Formal Resolution Processes. It is conducted by an Informal Resolution Facilitator appointed by the Title IX Coordinator. The Complainant, Respondent, The Title IX Coordinator or Facilitator may terminate Informal Resolution at any time prior to its completion. If informal Resolution is terminated, the Formal Resolution Process will promptly commence or resume, as appropriate. Informal Resolution may take many forms as agreed upon Complainant, Respondent, and Title IX Coordinator, including but not limited to:

- **Mediation:** may involve the Complainant and Respondent being in the same or different rooms, but they will never be required to be in the same room.

Mediation typically does not require an admission of responsibility for the Prohibited Conduct by the Respondent.

- Restorative Justice: may involve the Complainant and Respondent being in the same or different rooms, but they will never be required to be in the same room. Restorative Justice typically requires an admission of responsibility for the Prohibited Conduct, or certain allegations, by the Respondent. If the Informal Resolution is terminated such that the matter resumes the Formal Resolution Processes, any testimony and/or materials/documents used and/or submitted during the Informal Resolution may be used as evidence in the Formal Resolution at the discretion of the Hearing Panel/ Decision-maker(s). The informal Resolution Facilitator will not serve as a witness during the Formal Resolution Process. The Title IX Coordinator may determine that Informal Resolution is not an appropriate option where the Respondent has had prior instances of resolving Formal Complaints through Informal Resolution or a Hearing. The Informal Resolution process typically should be completed within thirty (30) calendar days of the parties documenting their agreement to participate. That period may be extended at the discretion of the Title IX Coordinator.

IX FORMAL RESOLUTION PROCESS:

Marywood University strives to resolve Formal Complaints within ninety (90) calendar days of the submission of a Formal Complaint, but balances its desire to achieve a prompt resolution with the need to conduct a thorough and complete investigation, which may delay that timeframe. Delays might also result from a number of factors, including but not limited to the appeal of a dismissal as discussed in Section XII, impacts of concurrent criminal processes, or an attempt at Informal Resolution. The Title IX Coordinator may extend the time for completion of the Formal Resolution Process for good cause as determined in the sole discretion of the Title IX Coordinator, and will provide written notice to the Parties of the reason for extension or delay. At the discretion of the Title IX Coordinator, possible violations of the Student Code of Conduct or other policies that occurred directly in connection with the alleged Prohibited Conduct may be, but are not required to be, addressed under the Formal Resolution Processes here in lieu of engaging in a separate decision-making process for those possible violations.

A. Investigation:

The written notice described in Section X(A) will identify the appointed Investigator. Either party may object to the Investigator on the grounds of conflict of interest or bias for or against Complainants or Respondents generally, or the individual Complainant or Respondent, by submitting an objection to the Title IX Coordinator in writing within three (3) calendar days of receipt of the issuance of the written notice. The Title IX Coordinator, in their sole discretion, shall determine whether a different Investigator should be appointed. The Investigator will investigate of the allegations in the Formal Complaint, and is responsible for interviewing the Parties and witnesses, and gathering relevant inculpatory and exculpatory evidence. The Investigator may not access, consider, disclose, or otherwise use records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Complainant or Respondent, unless the Investigator obtains the Complainant's or Respondent's, as appropriate voluntary written consent to do so. All Parties will have an equal opportunity to identify witnesses, including fact and expert witnesses, and other inculpatory evidence (used to establish responsibility) and exculpatory evidence (used to establish favorability or exonerate), for the Investigator. Parties will be provided with written notice of the date, time, location, participants and purpose of all investigative interviews in which they are expected to participate. Parties may be accompanied by an Advisor of their choice at any investigative interview, as described in Section X.

B. Investigation Report:

The Investigator will prepare an investigation report summarizing all relevant evidence. The report will exclude all non-relevant evidence, as well as any evidence not subject to disclosure for reasons set forth herein (e.g., medical records regarding which the Party has not authorized disclosure). Prior to completing the investigation report, the Investigator will send to both Complainant and Respondent, and their Advisors, if any, all evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, regardless of whether it is anticipated that the evidence will be used at the hearing or in connection with any decision on responsibility. The Parties are strictly prohibited from disclosing or disseminating the evidence to

any third parties and from using it for purposes other than carrying out the Formal Resolution Process. Complainant and Respondent will have ten (10) calendar days to provide a written response concerning the evidence to the Investigator, including identifying additional evidence for the Investigator's consideration prior to completing the investigation report. The response must be by the Party, not the Party's Advisor. A Party's response may be shared with the other Party. After receipt of the Parties' responses concerning the evidence and at least ten (10) calendar days before the hearing, the Investigator will provide the Complainant and Respondent, and their Advisors, if any, a copy of the investigation report. The Complainant and Respondent may, but are not required to, provide written responses to the investigation report. Any response must be by the Party, not the Party's Advisor. A Party's response may be shared with the other party.

C. Hearing Notice:

Notice after the investigation report has been provided to the Parties and their Advisors, if any, and not fewer than five (5) calendar days before the hearing, the Title IX Coordinator will issue a Hearing notice via email advising the Parties of the following:

- The date, time and location of the Hearing.
- The specific charges of Prohibited Conduct subject to disposition at the Hearing and a brief description of the conduct resulting in the charges.
- The individual(s) to serve as the Hearing Officer(s)
- That at the request of either party, the Hearing will take place with parties located in separate rooms with technology enabling the parties to simultaneously see and hear the party/witness answering questions.
- Requests for separate rooms must be submitted to the Title IX Coordinator via email at least five (5) calendar days before the Hearing.
- That the hearing will take place remotely through an audiovisual platform.
- Any party may object the hearing date or challenge the appointment of the Hearing officer for bias or conflict of interest by submitting a written objection to the Title IX Coordinator via email with three (3) calendar days of the Title IX Coordinator issuing the hearing notice.
- The Title IX Coordinator, in their sole discretion, shall determine whether the Hearing Officer should be removed and/or the Hearing rescheduled. Once the

Hearing Officer is confirmed, the Title IX Coordinator will provide the Hearing Officer with a copy of the investigation report.

D. Hearing:

Hearings are governed by the procedures set forth below. The formal Rules of Evidence that may apply to any courtroom proceeding do not apply to Hearings conducted under this Policy. The only individuals who may appear at a Hearing are the Complainant and Advisor, Respondent and Advisor, and witnesses called by the Hearing Officer(s). The Parties and their Advisors may be present throughout the Hearing, with the exception of any recesses for which they are excused by the Hearing Officer. Witnesses are permitted to be present only when providing testimony. The Investigator and Title IX Coordinator may be present throughout the Hearing, as may other Marywood University representatives at the discretion of the Hearing Officer. If a Party fails to attend a Hearing, the Hearing may be held in the Party's absence, at the discretion of the Hearing Officer(s).

- **Witnesses**

At least five (5) days before the Hearing, the Hearing Officer(s) will advise the Parties which witnesses will be requested to provide testimony at the Hearing. No later than three (3) calendar days after such notice, the Parties may request that additional witnesses be requested to be present at the Hearing. The request must be submitted to the Hearing Officer(s) in writing, including a brief description of why the information is relevant to the determination of responsibility. Whether or not to approve such request as potentially providing relevant information shall be in the sole discretion of the Hearing Officer(s), who will advise the requesting Party of the final decision. If the request is approved, the Hearing Officer(s) will advise the other Party as well.

- **Documents**

All documentary evidence provided to the parties under Section XI(B) will be made available at the Hearing, as well as all evidence produced by the Parties in their response. The availability of such evidence does not suggest a determination on relevance, which shall be made by the Hearing Officer(s).

- **Relevance**

The Hearing Officer is responsible for making all determinations of relevance as to witnesses, questions and documentary evidence presented at the Hearing. For purposes of this Policy, “relevant” means that the evidence is probative of any material fact. Evidence that is not relevant will be excluded at the Hearing and may not form the basis for any decision by the Hearing Officer. Evidence that is duplicative of evidence already in the Hearing record may be deemed not relevant. Questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant’s prior sexual behavior are offered to prove that someone other than the Respondent committed the alleged conduct or if the questions and evidence concern a specific incident of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent.

- Standard of Proof

The Hearing Officer will make decisions on responsibility using a preponderance of the evidence standard of proof.

- Advisors at Hearings

The parties may be accompanied by their Advisor at the Hearing. As discussed in Section X(C), the Advisor may not address the Title IX Coordinator, Investigator, Hearing Officer, other Advisors or any other individuals participating in the Hearing. The only exception is with respect to cross-examination as discussed below. Like the parties, Advisors are required to adhere to the Rules of Decorum applicable to Hearings, as outlined in Section XI(D)(7). An Advisor who fails to do so may, at the sole discretion of the Hearing Officer, be required to leave the Hearing. The parties shall inform the Title IX Coordinator whether they will be accompanied at the Hearing by their Advisor of choice by no later than five (5) days before the Hearing. If a party has not identified an Advisor, Marywood will provide one for the sole purpose of conducting cross-examination as discussed below. The Parties may not conduct cross-examination themselves; cross-examination must be performed by an Advisor. If an Advisor is required to leave a Hearing for failure to adhere to the Rules of Decorum or for any other reason, the Hearing Officer shall recess the Hearing until Marywood appoints an Advisor for purposes of cross-examination. Advisors provided by Marywood will be adults with an understanding of the purpose of cross-examination, but will not be attorneys or have training commensurate to attorneys with respect to conducting cross-examination.

- Hearing Procedures

The procedures here provide the general framework for any Hearing. The Title IX Coordinator or Hearing Officer(s) may alter certain procedures as deemed appropriate in their sole discretion to aid in the equitable resolution of the matter.

- Opening Statements- Each party will have the opportunity to make a brief (3) minutes maximum, opening statement. The parties will make any statements themselves, not through their advisor.
- Parties- Generally, the Hearing Officer will hear from the Complainant first, followed by the Respondent. Each Party will have the opportunity to provide relevant evidence to the Hearing Officer. The Hearing Officer will ask relevant follow-up questions of each party. Each Party's Advisor will have the opportunity to ask cross-examination questions of the other Party. Advisors are reminded of the importance of adhering to the Rules of Decorum in cross-examining the Parties and any witnesses. If a Party does not submit to cross-examination, the Hearing Officer(s) must not rely on any statement of that Party in reaching a determination regarding responsibility, regardless of where, when or in what forum the statement was made. The Hearing Officer cannot draw an inference regarding responsibility based solely on a Party's absence from the Hearing or refusal to answer questions. With respect to cross-examination, Advisors are limited to asking only relevant questions. The Hearing Officer will determine whether questions are relevant prior to the Party answering the question. If the question is deemed not relevant, the Hearing Officer will provide a brief explanation and the question will be precluded. The Hearing Officer's decision is not subject to challenge or objection during the Hearing.
- Witnesses- A similar process and the same rules that apply to Parties will apply to the testimony of witnesses. Like the Parties, any witness may appear remotely, with technology allowing the Hearing participants to simultaneously see and hear the witness. If a witness does not submit to cross-examination, the Hearing Officer must not rely on any statement of that witness in reaching a determination regarding responsibility, regardless of where, when or in what forum the statement was made. The Hearing Officer cannot draw an inference regarding responsibility based solely on a witness's absence from the Hearing or refusal to answer questions. The Investigator may be called as a witness. At the Hearing

Officer's discretion, the Investigator may be asked to testify before the Parties to facilitate an efficient presentation of evidence.

- Closing Statement- Each Party will have the opportunity to make a brief, (3) minutes maximum, closing statement. The Parties will make any statements themselves, not through their Advisor.
- Rules of Decorum- The following Rules of Decorum apply to parties, Advisors and witnesses participating in any Hearing. Individuals failing to follow the Rules of Decorum may be directed to leave the Hearing, at the Hearing Officer's sole discretion. Although the Hearing Officer may provide warnings or reminders of the Rules of Decorum before such removal, a pre-removal warning or reminder will not necessarily be provided depending on the nature of the conduct in question. All parties, Advisors, and witnesses will conduct themselves in a manner that is consistent with the Core Values of Marywood University. In particular, the Core Value of Respect will be demonstrated throughout the Hearing proceedings. Any and all individuals in attendance at the Hearing will conduct themselves in accordance with the rules, guidelines, and procedures outlined in this Policy. At the discretion of the Hearing Officer(s) any violations of these measures may result in an individual's removal from the Hearing proceedings.
 1. Do not talk on top of one another
 2. Do not shout or use an aggressive tone
 3. Advisors shall ask questions from a seated position
 4. Use a party or witness's preferred pronouns
 5. Do not ask the same questions repeatedly
 6. Parties or witnesses are not to answer questions posed by Advisors until directed by the hearing officer to do so.

The hearing outcome letter will be concluded within (5) five days of the conclusion of the hearing. It will be issued via email to the parties. It will include:

- A description of the allegations that led to the hearing, as potentially constituting Prohibited Conduct.
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination.
- A statement of factual findings supporting the determination.

- A statement of the conclusions regarding the application of this Policy to the facts.
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility.
- An explanation of the disciplinary sanctions imposed on the Respondent, if any.
- A statement of whether remedies designed to restore or preserve equal access to Marywood's education program or activity will be provided to the Complainant specific remedies will be identified in the Hearing Outcome Letter only to the extent those remedies directly affect the Respondent. The Title IX Coordinator is responsible for implementing such remedies.
- The procedures and permissible basis for the Complainant and Respondent to appeal.

The Hearing Outcome becomes final following the determination of the appeals, if any, or upon the date following the deadline for filing an appeal, if no appeal is pursued. No further appeals of any kind are permitted.

E. Sanctions and Remedies:

If the Respondent is found responsible for any Prohibited Conduct, the Title IX Coordinator will provide the Hearing Officer with the Respondent's prior conduct record for consideration in the Hearing Officer's assignment of a sanction or sanctions. The range of available sanctions includes:

- **Warning:** A formal statement that the conduct was unacceptable and a warning that further violation of any Marywood Policy, procedure, or directive will result in more severe sanctions/ responsive actions.
- **Required Counseling:** A mandate to meet with and engage in either University sponsored or external counseling to better comprehend the misconduct and its effects.
- **Probation:** A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated

areas of campus, no contact orders, and/or other measures deemed appropriate.

- Suspension: Termination of student status for a definite period of time not to exceed two years/or until specific criteria are met.
- Expulsion: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend University sponsored events. This sanction may be noted permanently as a conduct expulsion on the student's official transcript, subject to any applicable expungement policies.
- Withholding Diploma: Marywood University may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- Revocation of Degree: Marywood University reserves the right to revoke a degree previously awarded from the University for fraud, misrepresentation, and/or other violation of Marywood Policies procedures, or directives obtaining the degree, or for other serious violations committed by a student prior to graduation.
- Organizational Sanctions: Deactivation, loss of recognition, loss of some or all privileges (including University registration) for a specified period of time.
- Other Actions: In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.
- Employee Sanctions: Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:
 1. Warning- Verbal/Written
 2. Performance Improvement/ Management Process
 3. Required Counseling
 4. Required Training or Education
 5. Probation
 6. Loss of Annual Pay Increase
 7. Loss of Oversight or Supervisory Responsibility
 8. Demotion
 9. Suspension without pay
 10. Suspension with pay
 11. Termination

12. Remedies

The Title IX Coordinator is responsible for the implementation of remedies designed to restore or preserve equal access to Marywood University's education program or activity:

XII. APPEALS

Either party may appeal a determination of responsibility (or non-responsibility) as set forth in the Hearing Outcome by submitting a written appeal to the Title IX Coordinator by email within three (3) calendar days of the Hearing Officer's issues of the Hearing Outcome Letter. Appeals may be based on only one of the following:

- A procedural irregularity that affected the determination of responsibility;
- The existence of new evidence that was not reasonably available at the time of the Hearing that could affect the outcome of the matter and the Title IX Investigator or Hearing officer had a conflict of interest or bias against Complainants or Respondents generally, or the individual Complainant or Respondent, that affected the outcome of the matter as discussed in Section X appeals may also be based on the dismissal of a Formal Complaint alleging Title IX Sexual Harassment.

The appeal must be in writing and clearly explain the basis for the appeal. If the appeal is from the outcome of a Hearing, the Parties shall have access to the record of the Hearing to prepare for their appeal on such terms as the Title IX Coordinator provides. Upon receipt of an appeal, the Title IX Coordinator will notify the other Party that the appeal has been filed, permitting the party three (3) days to provide a response, and providing the parties with the identity of the Appeal Officer who will determine the matter. The Party's response will be provided to the appealing party, but no further exchange of positions is permitted. The Parties may challenge the appointment of the Appeal Officer for bias or conflict of interest by submitting a written objection to the Title IX Coordinator via email within three (3) calendar days of the Title IX Coordinator issuing the notice. The Title IX Coordinator, in their sole discretion, shall determine whether a new Appeal Officer should be identified. The Title IX Coordinator will forward the appeal and the other Party's response to the Appeal Officer.

The Appeal Officer will evaluate the appeal on the written record and recording of the Hearing, and may seek input from the Title IX Coordinator, Investigator and/or Hearing Officer as deemed appropriate in the Appeal Officer's sole discretion. For appeals from a Dismissal in Section X, The Appeal Officer will typically issue a written decision on the appeal, including the result and a brief rationale, within (5) five days of the Appeal Officer's receipt of the appeal materials. The Appeal Officer may take the following actions:

- Upholding the finding of the original Hearing Panel
- Send the case back and request a new hearing by the original Hearing Panel
- Render a different decision.

The Appeal Officer's decision is final. No further appeals are permitted.

XIII. RECORDKEEPING:

Marywood University will retain records created in connection with a Formal Complaint for seven (7) years. Such records include those relating to any Informal Resolution, the investigation, any determination regarding responsibility (including any audio or audiovisual recording or transcript), any disciplinary sanction imposed, any appeal and any remedies provided to the Complainant designed to restore or preserve equal access to Marywood's education program or activity. Marywood University will also document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the education program or activity. If Marywood University provides no supportive measures to the Complainant, it will additionally document why such a response was not clearly unreasonable in light of all the known circumstances.

XV. TRAINING:

Any individual serving as Marywood University's Title IX Coordinator, Investigator, Informal Resolution Facilitator, Hearing Officer or Appeal Officer will receive training on this Policy, the scope of Marywood University's Education Program or activity, how to conduct an Investigation and Formal Resolution Processes including Hearings, Appeals and Informal Resolution, as applicable and how to serve impartially, including by avoiding prejudgment of the facts as issue, conflicts of interest and bias. Further, they will receive training on questions of relevance,

and on preparing an Investigation Report, Hearing Outcome Letter, or Appeal decision, as appropriate.

XVI. MARYWOOD UNIVERSITY AND COMMUNITY RESOURCES:

All Marywood University employees (faculty, staff, and administrators) are expected to report actual or suspected sexual misconduct to the appropriate officials immediately, as discussed in section VII above. There are some limited exceptions. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected sexual misconduct. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared. If a Complainant expects formal action in response to their allegations, reporting to any Official with Authority can connect them with resources to report crimes and/or Policy violations, and these employees will immediately pass reports to the Title IX Coordinator or Deputy Title IX Coordinator (and police, if desired by Complainant) who will take action when an incident is reported to them. In addition to the Title IX Office, the following resources are available for a Complainant or third-party (including parents/guardians when appropriate).

On campus resources:

- Counseling and Student Development Center
Confidential Resource
McGowan Room 1017

Policy History:

09/30/2022: The Vice President for Finance and Administration approved the title change to Human Resources Generalist from Executive Director of Human Resources and the update to contact information.

10/20/2022: The Vice President for Finance and Administration approved the title change from Human Resources Generalist to Director of Human Resources.

