

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOHN DOE,
C/O ENGEL AND MARTIN
5181 NATORP BLVD., SUITE 210
MASON, OH 45040

Plaintiffs,

v.

MARIETTA COLLEGE,
215 5TH ST
MARIETTA, OH 45750

Defendant

Case No. **2:15-cv-2816**

COMPLAINT FOR DECLARATORY
JUDGMENT, BREACH OF
CONTRACT, INJUNCTIVE RELIEF,
AND TITLE IX

AND

JURY DEMAND

INTRODUCTION

1. Plaintiff John Doe brings this action for a declaratory judgment, breach of contract, violation of Title IX, and injunctive relief
2. This case arises out of the decision of Marietta College to impose disciplinary sanctions against John Doe in violation of the Plaintiff's federal statutory and contractual rights.

PARTIES

3. Plaintiff John Doe ("Doe") is a student at Marietta College.
 - a. John DoeDoe is a Texas resident with a residence at [OMITTED]. His driver's license and voter registration is from Texas and his parents live in Texas. He has been living in Ohio for the sole purpose of attending college, but considers himself a Texas resident. Doe has completed four semesters of coursework at Marietta College and has about three semesters left before he graduates.
 - b. Doe is the son of a Marietta College graduate.
4. Defendant Marietta College ("Marietta") is a private university.
 - a. Marietta has approximately 1,400 full-time students. The school is known for its Petroleum Engineering, Athletic Training, McDonough Leadership, and Physician Assistant programs, as well as its China Program.
 - b. Marietta has a principal place of business at 215 Fifth Street, Marietta, OH 45750.
 - c. Marietta voluntarily participates in federal spending programs.

JURISDICTION AND VENUE

5. This case arises, in part, under the laws of the United States, specifically United States, specifically Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 et seq

and 42 U.S.C. § 1988. Accordingly, this Court has jurisdiction in this matter pursuant to 28 U.S.C. §§ 1331 and 1343.

6. This case is between citizens of different states and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. Accordingly, this Court has jurisdiction in this matter pursuant to 28 U.S.C. § 1332.
7. The declaratory and injunctive relief sought in this matter is authorized by 28 U.S.C. §§ 2201 and 2202 and Federal Rules of Civil Procedure 57 and 65.
8. This Court may exercise supplemental jurisdiction over the state law claims because such claims are so related to claims in the action within the original jurisdiction of the Court that they form part of the same case or controversy under Article III of the United States Constitution, pursuant to 28 U.S.C. § 1367.
9. This Court is an appropriate venue for this cause of action pursuant to 28 U.S.C. § 1391. The defendant is a resident of the State in which this district is located and a substantial part of the events or omissions giving rise to the claim occurred in this district.

FACTS

THE MARIETTA SEXUAL MISCONDUCT POLICY

10. After years of criticism for being too lax on campus sexual assault, colleges and universities are relying on Title IX to crackdown on alleged perpetrators. Unfortunately, this crackdown has gone too far. Problems include: accused students effectively are presumed guilty; instead of requiring accusers to prove they were assaulted, the accused students have to prove they had consent; and schools apply the very lowest standard of proof — preponderance of the evidence.
11. On April 11, 2011, the U.S. Education Department's Office of Civil Rights sent a “Dear Colleague” to colleges and universities.

- a. The Dear Colleague Letter indicated that, in order to comply with Title IX, colleges and Universities must have transparent, prompt procedures to investigate and resolve complaints of sexual misconduct.
 - b. Most notably, the Dear Colleague Letter required schools to adopt a relatively low burden of proof—"more likely than not"—in cases involving sexual misconduct, including assault. Several colleges had been using "clear and convincing," and some, like Stanford, applied the criminal standard, "beyond a reasonable doubt."
 - c. The Dear Colleague Letter states that schools should "minimize the burden on the complainant," transferring alleged perpetrators, if necessary, away from shared courses or housing.
 - d. The Dear Colleague Letter, while not completely ignoring due process concerns, suggested that schools should focus more on victim advocacy.
 - e. The Dear Colleague Letter states that schools should give both parties the right to appeal a decision, which amounts to double jeopardy for an accused student.
 - f. After the Dear Colleague Letter was published, many schools changed their sexual assault and sexual harassment policies and procedures.
12. The Federal Government, through the Department of Education, Office of Civil Rights, has been pressuring colleges and universities to aggressively pursue investigations of sexual assaults on campuses.
- a. The Dear Colleague letter was a step in the increased enforcement of Title IX on college and universities. NPR described the Dear Colleague Letter as the government's "first warning shot." Source: *How Campus Sexual Assaults Came To Command New Attention*, NPR, August 12, 2014.

- b. The Washington Post reported in March 2015 that the Office of Civil Rights was seeking to hire up to 200 more investigators.
 - c. In May 2014, the federal Department of Education disclosed for the first time the names of colleges — 55 in all, including Hobart and William Smith — under investigation for possibly violating federal rules aimed at stopping sexual harassment.
 - d. The Federal government is investigating at least 129 schools for possible Title IX violations, including notable schools such as UC Berkeley, Stanford, Harvard, Brown University, Columbia University, Cornell University, Dartmouth College, Johns Hopkins University, the University of Chicago and many top state universities. The Department has negotiated settlements with many schools, including Ohio State.
 - e. In February 2014, Catherine E. Lhamon, the assistant secretary of education who heads the department's Office for Civil Rights, told college officials attending a conference at the University of Virginia that schools need to make “radical” change. According to the Chronicle of Higher Education, college presidents suggested afterward that there were “crisp marching orders from Washington.” Source: *Colleges Are Reminded of Federal Eye on Handling of Sexual-Assault Cases*, Chronicle of Higher Education, February 11, 2014.
 - f. Lhanon was quoted in the LA Times stating, “We don’t treat rape and sexual assault as seriously as we should, . . . [There is] a need to push the country forward.” David G. Savage and Timothy M. Phelps, *How a little-known education office has forced far-reaching changes to campus sex assault investigations*, LA Times August 17, 2015.
13. Schools are scared of being investigated or sanctioned by the Department of Education.
- a. The Federal government has created a significant amount of pressure on colleges and universities to treat all those accused of sexual misconduct with a presumption of guilt. The Chronicle of Higher Education noted that “Colleges face increasing pressure from

survivors and the federal government to improve the campus climate.” Source: *Presumed Guilty: College men accused of rape say the scales are tipped against them*, Chronicle of Higher Education, September 1, 2014. In the same article, the Chronicle noted that different standards were applied to men and women: “Under current interpretations of colleges’ legal responsibilities, if a female student alleges sexual assault by a male student after heavy drinking, he may be suspended or expelled, even if she appeared to be a willing participant and never said no. That is because in heterosexual cases, colleges typically see the male student as the one physically able to initiate sex, and therefore responsible for gaining the woman’s consent.”

- b. Lhamon told a national conference at Dartmouth in the summer of 2014, “I will go to enforcement, and I am prepared to withhold federal funds.” Source: *How Campus Sexual Assaults Came To Command New Attention*, NPR, August 12, 2014. In that same article, Anne Neal of the American Council of Trustees and Alumni was quoted as follows: “There is a certain hysteria in the air on this topic, . . . It’s really a surreal situation, I think.” She explained that schools are running so scared of violating the civil rights of alleged victims that they end up violating the due process rights of defendants instead.
- c. In June 2014, Lhannon told a Senate Committee, “This Administration is committed to using all its tools to ensure that all schools comply with Title IX . . .” She further told the Committee:

If OCR cannot secure voluntary compliance from the recipient, OCR may initiate an administrative action to terminate and/or refuse to grant federal funds or refer the case to the DOJ to file a lawsuit against the school. To revoke federal funds—the ultimate penalty—is a powerful tool because institutions receive billions of dollars a year from the federal government for student financial aid, academic resources and many other functions of higher education. OCR has not had to impose this severe penalty on any institution recently because our enforcement has consistently resulted in institutions agreeing to take the steps necessary to come into compliance and

ensure that students can learn in safe, nondiscriminatory environments.

- d. Robert Dana, dean of students at the University of Maine, told NPR that some rush to judgment is inevitable. "I expect that that can't help but be true," he says. "Colleges and universities are getting very jittery about it." Source: *Some Accused Of Sexual Assault On Campus Say System Works Against Them*, NPR, September 3, 2014.

14. On at least two occasions, Marietta has been the subject of complaints filed with the Department of Education Office of Civil Rights.

15. On May 11, 2012, the Marietta Board of Trustees approved a Sexual Misconduct Policy and Grievance Procedures (the "Sexual Misconduct Policy.") A copy of the Sexual Misconduct Policy is attached as Exhibit A.

- a. On information and belief, the Sexual Misconduct Policy was adopted in direct response to the pressure from the Department of Education.

- b. The stated purpose of the Sexual Misconduct Policy is to

16. The Sexual Misconduct Policy is contained in the Marietta College Student Handbook.

- a. The relationship between Doe and Marietta is contractual in nature.
- b. The Marietta College Student Handbook provides the terms of the contract between Doe and Marietta.

- c. The Marietta College Handbook provides that "All registered students at Marietta College are responsible for knowing the policies, expectations, procedures, and information contained in this handbook." The Marietta College Student Handbook is found at:

http://www.marietta.edu/Student_Life/Living_on_Campus/housing/housing_forms/student_handbook.pdf and is incorporated herein.

17. The Sexual Misconduct Policy defines “sexual misconduct,” as a form of sex discrimination prohibited by Title IX. The Sexual Misconduct Policy defines “sexual misconduct broadly” to include sexual harassment, non-consensual sexual intercourse or sexual contact, and retaliatory harassment.
18. A person found to have violated the Sexual Misconduct Policy is subject to disciplinary action up to and including expulsion from the university.
19. The Sexual Misconduct Policy defines “Stalking” as follows: “repetitive and/or menacing pursuit, following, harassment and/or interference with the peace and/or safety of a member of the community; or the safety of any of the immediate family of members of the community.”
20. As Marietta College's Title IX Officer, Richard Danford holds the primary responsibility for coordinating the College's Title IX compliance efforts, including overseeing all complaints of noncompliance and identifying and addressing any patterns or systemic problems that arise during the review of such complaints. This includes the enforcement of the Sexual Misconduct Policy.
 - a. In this role, the Title IX Officer is expected to act as a fair and impartial finder of facts.
 - b. However, the Title IX office is also supposed to provide support to alleged victims. In this role, the office is expected to act as an advocate for alleged victims of sexual misconduct.
21. Marietta also has a police force. The police officers are sworn law enforcement officers who perform public duties.

THE JUNE 27, 2014 INCIDENT

22. On June 27, 2014, a female Marietta student, referred to here as Jane Roe, reported to the Marietta College Police that she was woken in her dorm room at approximately 5:00 am by an unknown male wearing a black hoody and black sweat pants. She lived on the third floor of the

dorm. She reported that she screamed for help and the unknown male ran away. This is referred to as the “June 27, 2014 Incident.”

23. On the night of the incident, there was significant evidence to suggest that the June 27, 2014 Incident never occurred.

- a. Jane Roe was unable to provide any description of the person who allegedly was in her room.
- b. Jane Roe said that nothing was missing in her room and that the only thing disturbed was the battery pack for her dildo.
- c. Jane Roe indicated that she had previously received counseling because of recurrent nightmares that someone had broken into her room and was standing by her bed.
- d. A Marietta College police officer patrolled the area but “saw no one outside” and no one on campus.”
- e. A Marietta College police officer interviewed several potential witnesses, none of whom could corroborate any of Jane Roe’s allegations.
 - i. A resident who lived on the ground floor of the building indicated that she “did not hear anyone or see anyone suspicious in the building.”
 - ii. A resident who lived on the third floor stated he “didn’t see or hear anyone suspicious I the dorm.”
 - iii. Another resident who lived on the third floor stated he “did not hear anyone or see anyone who seemed suspicious.”
 - iv. A third resident who lived on the third floor stated she “did not see or hear anyone in the building that she found suspicious.”
 - v. A fourth resident on the third floor of the dorm stated only that he observed a “girl . . . in a black shirt and black shorts” but did not find her to be suspicious.

- vi. A resident on the second floor of the dorm indicated that he did not see anyone “who seemed out of place or suspicious.” He also stated that he did not recall seeing anyone wearing black that evening.

- 24. On or about June 30, Officer Kim Settle began an investigation of the June 27, 2014 Incident.
- 25. On June 30, 2014 Settle spoke with a Marietta employee who was working in the dorm around the time of the June 27, 2014 Incident.
 - a. The Ohio Uniform Incident Report prepared by the Marietta College Police Department indicates that the incident occurred at 5:05 am.
 - b. The Marietta College records indicated that this employee “swiped in” to the dorm at 4:58 am.
 - c. The employee told Officer Settle that she did not see or hear anyone. She further said, “the building noise carries throughout . . . if there was anything going on inside the building at that time she would have heard it.”
- 26. Settle spoke to a co-worker of Jane Roe, Female Student Y. Female Student Y stayed with Jane Roe immediately after the June 27, 2014 Incident.
 - a. The statement provided by Jane Roe to Female Student Y was significantly different than the statement given to the police. In particular, Jane Roe never disclosed to Female Student Y that the intruder had disturbed her dildo.
 - b. Jane Roe identified Male Student B and Male Student A as potential suspects.
 - c. Jane Roe stated to Female Student Y that “she has had a recurring nightmare that she would wake up with someone standing over her bed since she came to” Marietta.
- 27. Settle determined that Male Student B fit the description of the potential intruder. Settle did not indicate that Male Student A fit the description of the alleged intruder.
- 28. On July 7, 2014, Settle met with Jane Roe and Jane Roe’s Mother.

- a. Jane Roe disclosed that she had been with John Doe earlier in the evening, and that she had invited John Doe into her dorm room when she wished to use the restroom.
 - b. Jane Roe disclosed that she had broken up with Male Student A a few weeks prior to the June 27, 2014 Incident. She complained that Male Student A had been looking at websites on incest and “male on male” pornography, had been “using her as a tool for his panty and other fetishes,” and would engage in sexual conduct with her while she was sleeping. Roe later disclosed that she liked it when they would have sex as she pretended to be asleep and that she had rape fantasies.
29. On July 9, 2014, Officer Settle interviewed Male Student A
- a. Male Student A denied being involved in the June 27, 2014 Incident. Settle noted that she had not “observed any indication that [Male Student A] was being deceptive during any portion” of his interview.
 - b. Officer Settle, even though she had no evidence that Male Student A had broken any laws or Marietta rules, served Male Student A with a “trespass notice” for all college property and a “no contact order” for Jane Roe.
 - c. Officer Settle, after speaking with Jane Roe decided to continue the investigation. She also wanted to work with Jane Roe “to use an investigative technique in order to attempt to get a possible confession from Male Student A.”
30. On August 4, 2014, Officer Settle interviewed John Doe.
- a. John Doe indicated that he had met Jane Roe a few weeks earlier and had invited her to join him for drinks and food.
 - b. On the evening of June 26, 2014, John Doe and Jane Roe met at John Doe’s apartment. They walked through the campus to a bar.

- c. On the way to the bar, Jane Roe wished to stop in her dorm to use the restroom. John Doe stayed in Jane Roe's dorm room while she used the restroom down the hall. They then proceeded to the bar to meet with his friends for the rest of the evening.
 - d. John Doe walked Jane Roe back to her dorm at about 8:00 in the evening. He left her in the parking lot and returned to his friends at the bar.
 - e. John Doe provided the names of five individuals he was with all evening until they went for breakfast on June 27, 2014.
 - f. Jane Roe called and texted John Doe's friends at about 5:00 in the morning.
31. On August 4, 2014, Jane Roe met with Officer Settle. Jane Roe admitted to Officer Settle that she had committed the crime of underage drinking. Officer Settle did not file charges against Jane Roe.
32. Officer Settle had information that Male Student A was innocent, Yet, Officer Settle did not remove the Trespass Order of the No Contact Order.
- a. On August 4, 2014 Settle's notes indicated that she did not believe that Male Student A was responsible for the June 27, 2014 Incident.
 - b. On August 12, 2014 Settle interviewed an alibi witness who confirmed that Male Student A was not responsible.
33. On August 6, 2014, Settle interviewed a resident of the dorm. This resident indicated that he saw Jane Roe screaming in the hallway. The resident said that he "went through the dorm and checked the hall . . . and did not see or hear anyone."
34. On August 11, Settle interviewed one of John Doe's alibi witnesses. This witness indicated that she was with John Doe, and that he had received text messages from Jane Roe at around the time of the June 27, 2014 Incident.
35. On August 13, 2014 Settle met again with Jane Roe.

- a. Jane Roe told Settle that John Doe did not wish to provide fingerprints because he might have been involved in a separate crime on campus.
 - b. Jane Roe suggested Male Student B as a potential suspect. She complained that Male Student B had made her uncomfortable by making statements and sending text messages asking her out; the text messages did not contain any sexual content. She indicated that her view of Male Student B had changed from “thinking it was cool to have someone to hang out with, onto being creeped out . . .”
 - c. Jane Roe suggested that Male Student B fit a number of male stereotypes, describing him as a “sleaze=ball” and “definitely not the type of person that you would want to get drunk around or have in your room at 10:30 at night.”
36. On August 22, 2014, John Doe, along with another male student, were observed by Marietta City police in a suspicious location. He ran from He subsequently was convicted of obstructing official business in Marietta Municipal Court case no. CRB 1500393.
37. On August 25, 2014 Officer Settle spoke with a Female X.
 - a. Female X told Officer Settle that she had had problems with Jane Roe previously, and that the two were supposed to work together in the library. The problems with Jane Roe stemmed, in part, from the fact that Female X had reported Jane Roe for smoking marijuana.
 - b. Officer Settle served a “No Contact” order on Female X, prohibiting her from speaking with Jane Roe.
38. On August 25, 2014 Officer Settle told Jane Roe that she would be serving John Doe with a no trespass order prohibiting him from entering the entire Marietta campus.
39. On September 3, 2014, Officer Settle spoke with John Doe.

- a. She attempted to obtain fingerprints from John Doe. John Doe refused, as was his constitutional right.
 - b. She asked him to submit to an interview at the police station. When John Doe refused, Officer Settle indicated that she would “be sending him for a judicial review.”
40. On September 10, 2014 Officer Settle spoke with Male Student A. Male Student A complained about having received a “no trespass” order from Marietta. He stated that he was embarrassed and upset by the situation, and complained, “he will be looked at as a rapist.”
41. On September 29, 2014, Jane Roe expressed her frustration to Officer Settle that John Doe could “continue to avoid us and not submit his prints.” Later that day, Officer Settle provided to a Marietta judicial review hearing testimony. The purpose of the hearing was to determine if Doe had violated any of the Marietta policies or rules. Her report indicates that she spoke with the hearing officer both before and after the hearing, even though she was aware that she could not be present at the full hearing because she was a witness.
- a. Settle sought to obtain fingerprints from Doe by having him pick up a document that was “planted” at the hearing.
 - b. Settle provided information to the hearing officers about her investigation that was not disclosed to Doe at the hearing.
 - c. Settle noted in her report that “Based on my training and experience all of [John Doe’s] behavior is indicative of a guilty individual.”
42. On October 7, 2014, Officer Settle noted that she did not have probable cause for an arrest or, even a search warrant. Nonetheless, she expressed her opinion in her narrative that John Doe was guilty of the crime against Jane Roe. She also noted that “He has obviously used his deceptive and persuasive nature to compel others to lie and create stories to divert attention from him.”

43. On January 29, 2015, Officer Settle sent evidence to the BCI crime lab for review. The crime lab indicated that there were insufficient details to permit an examination.
44. On March 10, 2015, Jane Roe complained to the police that John Doe had attempted to add her to his “snapchat” contacts. Jane Roe believed this was a violation of the Marietta College No Contact Order.
45. On March 12, 2015, Jane Roe complained to the police that John Doe had violated the no-contact order. She said that John Doe was at a basketball game “in the bleachers, but far away from me.” She also complained that she had observed John Doe at a local bar one evening, although John Doe did not speak with her.
46. While investigating the “snapchat” complaint, Settle determined that John Doe had used his Marietta ID card to access buildings on campus on a number of occasions.
 - a. John Doe did not see or interact with Jane Roe during any of these times.
 - b. John Doe believed that he was permitted to access the buildings because his card worked.
47. On May 27, 2015, Officer Settle closed her case into the June 27, 2014 Incident.
 - a. No person was charged in connection with this incident.
 - b. Officer Settle continued to believe that John Doe was responsible even though all of the evidence suggested that no crime actually occurred. Instead, the most likely explanation for the June 27, 2014 Incident was that Jane Roe had a dream. This conclusion is based on the facts that (i) Jane Roe admitted that she had such recurrent dreams; and (ii) no person could corroborate the presence of any person in the dorm at the time of the alleged incident.

THE DISCIPLINARY PROCEEDINGS AGAINST JOHN DOE

48. On September 30, 2014, John Doe was found to have violated a number of Marietta policies related to drug and alcohol use.
- a. John Doe was ordered to have an alcohol assessment and to meet with the Dean of Students monthly.
 - b. John Doe was ordered to not enter any Marietta residence halls.
49. On March 12, 2015 John Doe was informed that he faced discipline for violating the Code of Student Conduct. This discipline was for violating the No Trespass and No Contact Orders.
50. On March 24, 2015, Marietta conducted a hearing to determine if John Doe should be disciplined for violating the Code of Student Conduct. This discipline was for violating the No Trespass and No Contact Orders. The board found John Doe to be responsible.
51. On March 25, 2015, John Doe was informed that he had been suspended from Marietta but could apply for re-admission in Spring 2016.
52. John Doe appealed this decision; the appeal was denied on April 20, 2015.
53. Despite the imposition of discipline under the Code of Student Conduct against John Doe for violating the No Trespass and No Contact Orders, Marietta *continued* to pursue additional sanctions against John Doe under the Sexual Misconduct Policy.
- a. In particular, Marietta accused John Doe of stalking Jane Roe in violation of the Sexual Misconduct Policy.
 - b. In a April 18, 2015 email, Danford explained that “the Title IX investigation is a separate process that is not related to Student Conduct, and that its is shaped by Federal mandates that require strict compliance by Marietta College and all other institutions of higher learning.”
54. On April 10, 2015, the Assistant Dean of Students and Deputy Title IX Coordinator and the Title IX Coordinator received a Memorandum from two Title IX investigators.

- a. The investigators had examined whether John Doe had violated the Sexual Misconduct Policy.
- b. The investigators applied the definition of stalking found in the Sexual Misconduct Policy.
- c. The investigators concluded that the Sexual Misconduct Policy “was not violated.” The investigators said, “During the course of our investigation, we found violation of the no-contact order that did not rise to the level of Stalking or any other Title IX Sexual or Gender-Based Policy offense.”
- d. The investigators further concluded, “this investigation finds that the respondent is, based on a preponderance of the evidence, not responsible for any Title IX violations in this case.”

55. On April 14, 2015, Marietta received an appeal on behalf of Jane Roe. This appeal was submitted by the Executive Director of SurvJustice, Inc.

- a. SurvJustice is, on information and belief, a SurvJustice is a national not-for-profit organization that provides legal assistance to student who claim to be survivors of sexual assault to enforce their Title IX rights on campuses. The Executive Director of SurvJustice was one of the experts cited in the infamous and false Rolling Stone UVA rape story. According to the Daily Beast, “After the tale unraveled and Rolling Stone issued an apology, [the Executive Director] defended the original story and denounced doubters as ‘rape denialists.’” *The Media Is Making College Rape Culture Worse*, Daily Beast, January 23, 2015.
- b. The appeal suggested that that investigation should have applied a different, broader definition of “stalking” than the definition contained in the Sexual Misconduct Policy.

56. On April 14, 2015 John Doe and Jane Roe were informed that John Doe was “not responsible” for violating Marietta’s “policy prohibiting stalking.” The students were further informed that John Doe’s previous sanctions, including his one year suspension, remained in effect.
57. On April 16, 2015, the authors of the April 10, 2015 Title IX investigation provided a follow-up report.
- a. This report applied the broader definition of stalking and “reexamined the facts of the case in light of the new definition.”
 - b. The report, again, concluded that John Doe had not violated the Marietta Sexual Misconduct Policy. They wrote, “the investigators affirm the original summary finding, the Marietta College’s Title IX Sexual Misconduct and Gender-based Misconduct Policy was not violated.”
58. On April 20, 2015 John Doe and Jane Roe were informed that John Doe was “not responsible” for violating Marietta’s “policy prohibiting stalking.” The students were further informed that John Doe’s previous sanctions, including his one year suspension, remained in effect.
59. On May 4, 2015, Marietta conducted an administrative hearing. The hearing was to deal with the allegation that John Doe “has been accused of violating the . . . Student Code of Conduct in regards to: Stalking.”
60. During the May 4, 2015 Hearing Marietta employed a definition of “stalking” that was different from the definition contained in the Sexual Misconduct Policy.
- a. The Code of Conduct in effect that the time defined stalking as “repetitive and/or menacing pursuit, following, harassment and/or interference with the peace and/or safety of a member of the community; or the safety of any of the immediate family of members of the community.”

- i. This is the definition of the Sexual Misconduct Policy approved by the Board of Trustees.
- ii. This definition is still available on the Marietta web page:

7. **Stalking**, defined as repetitive and/or menacing pursuit, following, harassment and/or interference with the peace and/or safety of a member of the community; or the safety of any of the immediate family of members of the community.

- b. The definition used by the hearing panel defined stalking as “engaging on a course of conduct directed at a specific person that would cause a reasonable person to (i) Fear for the person’s safety or the safety of others; or (ii) suffer substantial emotion distress. The full text is as follows:

Definition for Stalking

Stalking:

- 1) Engaging in a course of conduct directed at a specific person that would cause a reasonable person to
 - (i) Fear for the person’s safety or the safety of others; or
 - (ii) Suffer substantial emotional distress
- 2) For the purpose of this definition
 - (i) Course of conduct means two or more acts, including, but not limited to, acts in which the 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.
 - (ii) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
 - (iii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

- c. Interesting, the 2015-2016 Marietta student handbook has changed the definition of stalking to match the definition used in John Doe’s hearing. The new handbook seems to have this literally pasted in, with a different font:
- d. At the hearing, Jane Roe provided a statement suggesting that neither definition was appropriate, but instead Marietta was “required” to use a definition borrowed from federal law in the 2013 Violence Against Women Act. This definition defined stalking as a course of conduct directed at a specific person that would cause a reasonable person to fear for the person’s safety.”

G. Stalking, defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for the person’s safety or the safety of others; or
- Suffer substantial emotional distress.

For the purpose of this definition:

- Course of conduct means two or more acts, including, but not limited to, acts in which the 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.
- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

61. During the hearing, Jane Roe told the panel that John Doe was the “primary suspect” in the June 27, 2014 Incident. The notes from the hearing panel indicate that the hearing panel also asked about the June 27, 2014 Incident.
62. During the hearing, Jane Roe made barely veiled threats that she would be filing a Title IX suit against Marietta. She indicated that she was transferring schools because John Doe’s actions “have interfered with my education . . . “ and “I have lost the benefit of my education here at Marietta due to these ongoing safety concerns.”

63. On May 6, 2015 John Doe was informed that the hearing panel had found him responsible. In informing John Doe that he had been found responsible, the Associate Dean of Students specifically relied upon the definition of stalking that was not found in the Sexual Misconduct Policy.
64. John Doe appealed this decision. This appeal was denied.
65. As a result, John Doe has been expelled from Marietta.

DISCRIMINATORY CONDUCT

66. Marietta has discriminated against John Doe on the basis of gender.
- a. Marietta was heavily invested in protecting Female accusers even when there is no evidence of wrongdoing by males. This is illustrated by the persistence of Marietta employees in pursuing the investigation of the June 17, 2014 Incident even though there was substantial evidence to suggest that the entire report had been a fabrication.
 - b. Marietta ignored the findings of its Title IX investigators.
 - c. Marietta employed a definition of “stalking” that was not contained in the Sexual Misconduct Policy.
 - i. When given a choice between possible definitions to apply, Marietta chose to apply the definition of stalking that was least favorable to the male student accused of misconduct.
 - ii. Marietta adopted this definition at the request of advocates for women who assert that they were victims of sexual assault. Ironically, the advocate who suggested that Marietta use this definition was a supporter of the discredited allegations against a UVA fraternity described in Rolling Stone.
 - d. John Doe was subjected to an investigation and discipline related to Jane Roe even though no evidence linked him to any misconduct in regards to her.

- i. John Doe was the subject of a no-contact order and was prohibited from entering the Marietta campus even though there was no evidence of any wrong-doing in connection with the June 27, 2014 Incident.
 - ii. John Doe was targeted and harassed by Officer Settle even though there was no evidence of any wrong-doing in connection with the June 27, 2014 Incident.
- e. John Doe was subjected to an investigation for “stalking” even though he was already subject to discipline *for the exact same conduct*.
- f. Other males were subjected to summary sanctions simply because Jane Roe believed that they might be guilty.
 - i. Male Student A was the subject of a no-contact order and was prohibited from entering the Marietta campus even though there was no evidence of any wrong-doing in connection with the June 27, 2014 Incident.
 - ii. Male Student A was the subject of a no-contact order and was prohibited from entering the Marietta campus even after he had been cleared of any wrong-doing in connection with the June 27, 2014 Incident.
 - iii. Male Student B was subjected to an interrogation and humiliation even though there was no evidence of any wrong-doing in connection with the June 27, 2014 Incident.
- g. This discrimination is intentional and is a substantial or motivating factor for Marietta’s actions in this case.
 - i. On information and belief, Marietta, encouraged by federal officials, has instituted solutions to sexual violence against women that abrogate the civil rights of men and treat men differently than women.

- ii. On information and belief, Marietta imposed sanctions on John Doe because it was afraid of an investigation from the Department of Education and/or a Title IX lawsuit from Jane Roe.

67. Marietta College employees have a chauvinistic view of men as “predators” and women as the “guardians” of virtue. In particular, this view is expressed most explicitly by Officer Settle.

- a. On September 3, 2014, Officer Settle wrote in her narrative her view that John Doe was responsible for the Break-In despite not having enough evidence to establish probable cause.
- b. Settle wrote in her narrative that John Doe spent a week “calling and texting” Jane Roe “and at no time did [Doe] mention having a girlfriend.”

- c. Settle theorized that after leaving Roe:

[Doe] returns to the company of his friends and continues to drink. [Another student] and his friends likely tease [Doe] about being rejected for the remainder of the evening. [Doe] and his friends return to his apartment where they continue to drink and smoke marijuana. [Doe] becomes upset that [Roe] rejected him and waits for everyone to fall asleep. He returns to her dorm to find that her door has been left unlocked. [Doe] enters her room and attempts to wake her with the rape fantasy she has described that she and [her former boyfriend] had played out as a couple.

- d. Significantly, Settle had no evidence to support many of the stereotypical views of males contained in the previous paragraph. These stereotypical views include: (i) males are embarrassed and upset if rejected sexually by a female; and (ii) males tease each other about the failure to have sex with a female.
- e. Settle had no evidence that Doe would act in a stereotypical male fashion by being upset at having been “rejected.” Nor did Settle have any evidence that Doe’s friend acted in a stereotypical male fashion of teasing him about his failure to obtain a sexual conquest.

- f. Settle had a significant impact on the disciplinary sanctions imposed on Doe. For example, Settle discussed the matter with the hearing panel participants both before and after the hearing in order to assure that they had *ex parte* information.

**COUNT I
(BREACH OF CONTRACT)**

- 68. Plaintiff repeats and incorporates all the allegations of this Complaint, as if fully set forth herein.
- 69. By enrolling at Marietta, and paying his tuition and fees, and attending the school, Doe and Marietta had a relationship that may reasonably be construed as being contractual in nature.
 - a. Doe paid Marietta tuition and fees for the Spring 2015 semester.
 - b. Marietta has not refunded Doe's tuition and fees for the Spring 2015 semester even though Marietta College has refused to provide Doe with an education that semester.
 - c. The terms of the contract between Doe and Marietta are generally found in various Marietta policies and procedures.
 - d. A portion of the terms of the contract between John Doe and Marietta are found in the Sexual Misconduct Policy.
- 70. John Doe's breach of contract claim is based on Marietta's failure to follow the Sexual Misconduct Policy. In the handling of his case and his appeal, Marietta applied a definition of stalking that was not included in the Sexual Misconduct Policy.
- 71. John Doe has suffered damages from Marietta's actions. Expulsion from Marietta would deny John Doe the benefits of education at his chosen school.
- 72. Expulsion and other sanctions has significantly damaged his academic and professional reputation. In particular, the expulsion and other sanctions have negatively affected his ability to enroll at other institutions of higher education and to pursue a career. This has resulted in damages in excess of \$100,000.

**COUNT II
(TITLE IX)**

73. Plaintiff repeats and incorporates all the allegations of this Complaint, as if fully set forth herein.
74. Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 et seq., and its implementing regulations, 34 C.F.R. Part 106, prohibit discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. Title IX provides in pertinent part: "No person . . . 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."
75. Title IX bars the imposition of university discipline where gender is a motivating factor in the decision to discipline.
76. Title IX is enforceable through an implied private right of action for monetary damages as well as injunctive relief.
77. Marietta is an education program or activity operated by recipients of Federal financial assistance.
78. Like many educational programs throughout the nation, Marietta is under pressure to impose discipline on students in order to avoid pressure from the Department of Education.
79. Title IX bars the imposition of university discipline where gender is a motivating factor in the decision to discipline.
80. The gender of the alleged victim was the motivating factor in the decision to impose duplicative discipline upon John Doe.
81. Particular circumstances suggest that gender bias was a motivating factor behind the erroneous finding and the decision to discipline upon John Doe. These circumstances include:

- a. Marietta employees continued to pursue the investigation of the June 17, 2014 Incident even though there was substantial evidence to suggest that the entire report had been a fabrication.
- b. Marietta ignored the findings of its own Title IX investigators that John Doe had not violated the Sexual Misconduct Policy.
- c. Marietta employed a definition of “stalking” that was not contained in the Sexual Misconduct Policy.
- d. John Doe was subjected to an investigation and discipline related to Jane Roe even though no evidence linked him to any misconduct in regards to her.
- e. Other males were subjected to summary sanctions simply because Jane Roe believed that they might be guilty.
- f. Marietta imposed sanctions on John Doe because it was afraid of an investigation from the Department of Education and/or a Title IX lawsuit from Jane Roe.
- g. Marietta College employees have a chauvinistic view of men as “predators” and women as the “guardians” of virtue.

82. As a direct and proximate result of the Defendant’s violations of John Doe’s rights under Title IX, John Doe has suffered severe and substantial damages. These damages include diminished earnings capacity, lost career and business opportunities, litigation expenses including attorney fees, loss of reputation, humiliation, embarrassment, inconvenience, mental and emotional anguish and distress and other compensatory damages, in an amount to be determined by a jury and the Court.

83. The Defendants are liable to John Doe for damages.

84. Pursuant to 42 U.S.C. §1988, John Doe is entitled to their attorney’s fees incurred in bringing this action.

**COUNT III
(DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF)**

85. Plaintiff repeats and incorporates all the allegations of this Complaint, as if fully set forth herein.
86. Marietta has breached the terms of its contract with John Doe.
87. Marietta actions in this matter violate Title IX.
88. John Doe and Marietta have a dispute about whether Marietta has acted in breach of its contractual obligations and in violation of Title IX.
89. The Defendant's continued actions against John Doe are causing substantial, immediate, and continuing damages. Expulsion from Marietta would cause John Doe to be denied the benefits of education at his chosen school, would damage his academic and professional reputations, and may affect his ability to enroll at other institutions of higher education and to pursue a career.
90. John Doe is entitled to an Injunction from this Court restoring him as a student at Marietta (consistent with previously imposed disciplinary sanctions).

Wherefore, Plaintiff seeks the following relief from the Court:

- On Counts I and II, Judgment in favor of John Doe awarding damages in an amount to be determined at trial but in excess of \$100,000.00;
- On Count III, an declaratory judgment that Marietta has violated its contractual obligations and Title IX and an Injunction restoring John Doe as a student (consistent with previously imposed discipline) and prohibiting further disciplinary proceedings in a manner that violates the contract between the parties and/or Title IX.
- Court costs, other reasonable expenses incurred in maintaining this action, including reasonable attorney's fees allowed under 42 USC §1988.

JURY DEMAND

Plaintiffs hereby demand a trial by jury of all issues so triable.

Respectfully submitted,

_____/s/ Joshua Adam Engel_____
Joshua Adam Engel (0075769)
ENGEL AND MARTIN, LLC
5181 Natorp Blvd., Suite 210
Mason, OH 45040
(513) 445-9600
(513) 492-8989 (Fax)
engel@engelandmartin.com

Exhibit A

MARIETTA COLLEGE

SEXUAL MISCONDUCT POLICY AND GRIEVANCE PROCEDURES

*For questions concerning this document,
Please contact:*

*Dr. Richard Danford
Title IX Coordinator
Marietta College
215 Fifth Street
Marietta, OH 45750
(740) 376-4899 or danfordr@marietta.edu*

ADAPTED FROM A MODEL POLICY
AUTHORED BY THE NCHERM PARTNERS:
BRETT A. SOKOLOW, J.D.
W. SCOTT LEWIS, J.D.
SAUNDRA K. SCHUSTER, J.D.

www.ncherm.org

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I. GENDER-BASED MISCONDUCT POLICY

INTRODUCTION

Members of the Marietta College community, guests, and visitors have the right to be free from sexual violence. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. When an allegation of misconduct is brought to an appropriate administrator's attention, and a Respondent is found to have violated this policy, serious sanctions will be used to reasonably ensure that such actions are never repeated. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This policy is intended to define community expectations and to establish a mechanism for determining when those expectations have been violated.

OVERVIEW OF POLICY EXPECTATIONS WITH RESPECT TO PHYSICAL SEXUAL MISCONDUCT

The expectations of our community regarding sexual misconduct can be summarized as follows: In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing, and voluntary consent prior to and during sexual activity. Consent is sexual permission. Consent can be given by word or action, but non-verbal consent is not as clear as talking about what you want sexually and what you don't. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Silence--without actions demonstrating permission--cannot be assumed to show consent.

Additionally, there is a difference between seduction and coercion. Coercing someone into sexual activity violates this policy in the same way as physically forcing someone into sex. Coercion happens when someone is pressured unreasonably for sex.

Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) because they lack the capacity to reasonably understand the situation. Individuals who consent to sex must be able to understand what they are doing. Under this policy, "No" always means "No," and "Yes" may not always mean "Yes." Anything but a clear, knowing and voluntary consent to any sexual activity is equivalent to a "no."

SEXUAL VIOLENCE -- RISK REDUCTION TIPS

Risk reduction tips can often take a victim-blaming tone, even unintentionally. With no intention to victim-blame, and with recognition that only those who commit sexual violence are responsible for those actions, these suggestions may nevertheless help you to reduce your risk experiencing a non-consensual sexual act. Below, suggestions to avoid committing a non-consensual sexual act are also offered:

1. If you have limits, make them known as early as possible.
2. Tell a sexual aggressor "NO" clearly and firmly.
3. Try to remove yourself from the physical presence of a sexual aggressor.
4. Find someone nearby and ask for help.
5. Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
6. Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do.

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk for being accused of sexual misconduct:

1. Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
2. Understand and respect personal boundaries.
3. DON'T MAKE ASSUMPTIONS about consent; about someone's sexual availability; about whether they are attracted to you; about how far you can go or about whether they are physically and/or mentally able to consent. If there are any questions or ambiguity, then you DO NOT have consent.
4. Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. They may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which they are comfortable.
5. Don't take advantage of someone's drunkenness or drugged state, even if they did it to themselves.
6. Realize that your potential partner could be intimidated by you, or fearful. You may have a power advantage simply because of your gender or size. Don't abuse that power.
7. Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
8. Silence and passivity cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

SEXUAL MISCONDUCT OFFENSES INCLUDE, BUT ARE NOT LIMITED TO:

- 1. Sexual Harassment**
- 2. Non-Consensual Sexual Contact (or attempts to commit same)**
- 3. Non-Consensual Sexual Intercourse (or attempts to commit same)**
- 4. Sexual Exploitation**

1. SEXUAL HARASSMENT

Sexual Harassment is:

- unwelcome, gender-based verbal or physical conduct that is
- sufficiently severe, persistent or pervasive that it
- unreasonably interferes with, denies, or limits someone's ability to participate in or benefit from the College's educational programs, employment, and/or activities, and is
- based on power differentials (quid pro quo), the creation of a hostile environment, or retaliation.

Examples include: an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention; to punish a refusal to comply with a sexual based request; to condition a benefit on submitting to sexual advances; sexual violence; intimate partner violence; stalking; gender-based bullying.

2. NON-CONSENSUAL SEXUAL CONTACT

Non-Consensual Sexual Contact is:

- any intentional sexual touching,
- however slight,
- with any object,
- by a man or a woman upon a man or a woman,
- that is without consent and/or by force.

Sexual Contact includes:

- Intentional contact with the breasts, buttocks, 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.

3. NON-CONSENSUAL SEXUAL INTERCOURSE

Non-Consensual Sexual Intercourse is:

- any sexual intercourse
- however slight,
- with any object,
- by a man or woman upon a man or a woman,
- that is without consent and/or by force.

Intercourse includes:

- vaginal penetration by a penis, object, tongue or finger, anal penetration by a penis, object, tongue, or finger, and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.

4. SEXUAL EXPLOITATION

Occurs when a student 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. Examples of sexual exploitation include, but are not limited to:

- invasion of sexual privacy;
- prostituting another student;
- non-consensual video or audio-taping of sexual activity;
- going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex);
- engaging in voyeurism;
- knowingly transmitting an STI or HIV to another student;
- exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals;
- sexually-based stalking and/or bullying may also be forms of sexual exploitation

ADDITIONAL APPLICABLE DEFINITIONS:

- **Consent:** Consent is clear, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity.
 - Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
 - Previous relationships or prior consent cannot imply consent to future sexual acts.
- **Force** is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that

overcome resistance or produce consent (“Have sex with me or I’ll hit you.” “Okay, don’t hit me, I’ll do what you want.”).

- 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. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
- NOTE: There is no requirement that a party resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.
- In order to give effective consent, one must be at least 18 years of age.
- Sexual activity with someone who one should know to be -- or based on the circumstances should reasonably have known to be -- mentally or physically incapacitated (by alcohol or other drug use, unconsciousness or blackout), constitutes a violation of this policy.
 - Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction).
 - This policy also covers a person whose incapacity results from a mental and/or a physical disability, sleep, involuntary physical restraint, or from the taking of rape drugs. 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 is a violation of this policy. More information on these drugs can be found at <http://www.911rape.org/>
- Use of alcohol or other drugs will never function as a defense for any behavior that violates this policy.
- The sexual orientation and/or gender identity of individuals engaging in sexual activity is not relevant to allegations under this policy.

SANCTION STATEMENT

- Any student found responsible for violating the policy on Non-Consensual or Forced Sexual Contact (where no intercourse has occurred) will likely receive a sanction ranging from probation to expulsion, depending on the severity of the incident, and taking into account any previous campus conduct code violations.*
- Any student found responsible for violating the policy on Non-Consensual or Forced Sexual Intercourse will likely face a recommended sanction of suspension or expulsion.*
- Any student found responsible for violating the policy on sexual exploitation or sexual harassment will likely receive a recommended sanction ranging from warning to expulsion,

depending on the severity of the incident, and taking into account any previous campus conduct code violations.*

*The Critical Issues Board reserves the right to broaden or lessen any range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior. Neither the initial hearing officers nor any appeals body or officer will deviate from the range of recommended sanctions unless justification exists to do so.

OTHER GENDER-BASED MISCONDUCT OFFENSES THAT FALL UNDER TITLE IX

1. Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
2. Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of gender;
3. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
4. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the College community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);
5. Bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally (that is not speech or conduct otherwise protected by the 1st Amendment).
6. Violence between those in an intimate relationship to each other;
7. Stalking, defined as repetitive and/or menacing pursuit, following, harassment and/or interference with the peace and/or safety of a member of the community; or the safety of any of the immediate family of members of the community.

CONFIDENTIALITY, PRIVACY AND REPORTING POLICY

When consulting campus resources, all parties should be aware of confidentiality, privacy and mandatory reporting in order to make informed choices. On campus, some resources can offer you confidentiality, sharing options and advice without any obligation to tell anyone unless you want them to. Other resources are expressly there for you to report crimes and policy violations and they will take action when you report your victimization to them.

To Report Confidentially

If one desires that details of the incident be kept confidential, they should speak with on-campus mental health counselors, campus health service providers, or off-campus rape crisis resources who can maintain confidentiality. Campus counselors are available to help you free of charge and can be seen on an emergency basis. The Marietta College Sexual Assault Victims' Advocate is also available to speak with you at no cost and can be reached at (740) 434-3457.

In addition, you may speak on and off-campus with members of the clergy and chaplains, who will keep reports made to them confidential. For confidential off-campus assistance, you can also call EVE, a local agency that provides free services to survivors of domestic violence or sexual assault, at (740) 374-5820.

NON-CONFIDENTIAL REPORTING TO “RESPONSIBLE PERSONS”

You are encouraged to speak to officials of the institution to make formal reports of incidents (deans, vice presidents, or other administrators with supervisory responsibilities, College police, and human resources). The College considers these people to be “responsible employees.” Notice to them is official notice to the institution. You have the right and can expect to have incidents of sexual misconduct to be taken seriously by the institution when formally reported, and to have those incidents investigated and properly resolved through administrative procedures. Formal reporting means that only people who need to know will be told, and information will be shared only as necessary with investigators, witnesses, and the accused individual.

REPORTING TO OTHER COLLEGE EMPLOYEES

Please note that the College expects any employee with good reason to believe that a person has been sexually assaulted, has been subjected to severe or pervasive gender-based harassment, or has otherwise been discriminated against because of gender to report that belief to the employee’s supervisor or, in the case of a potential sexual assault, to Campus Police. Therefore, depending on what information is provided, reports to these College employees may not be confidential.

Federal Statistical Reporting Obligations

Certain campus officials have a duty to report sexual misconduct for federal statistical reporting purposes (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. Mandated federal reporters include: student/conduct affairs, campus law enforcement, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.

Federal Timely Warning Reporting Obligations

Victims of sexual misconduct should also be aware that College administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. The College will make every effort to ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger. The reporters for timely warning purposes are exactly the same as detailed at the end of the above paragraph.

QUESTIONS AND ANSWERS

Here are some of the most commonly asked questions regarding Marietta College's Sexual Misconduct Policy and Grievance Procedures.

- *Does information about a complaint remain private?*

The privacy of all parties to a complaint of sexual misconduct must be respected, except insofar as it interferes with the College's obligation to fully investigate allegations of sexual misconduct. Where privacy is not strictly kept, it will still be tightly controlled on a need-to-know basis. Dissemination of information and/or written materials to persons not involved in the complaint procedure is not permitted. Violations of the privacy of the Complainant (alleged victim) or the Respondent (accused individual) may lead to disciplinary action by the College.

In all complaints of sexual misconduct, all parties will be informed of the outcome. In some instances, the administration also may choose to make a brief public announcement of the nature of the violation and the action taken, without using the name or identifiable information of the Complainant. Certain College administrators are informed of the outcome within the bounds of student privacy (e.g., the President of the College, Dean of Students, Director of Security). If there is a report of an act of alleged sexual misconduct to a conduct officer of the College and there is evidence that a felony has occurred, College Police will be notified. This does not mean charges will be automatically filed or that a victim must speak with the police, but the institution is legally required to notify law enforcement authorities. The institution also must statistically report the occurrence on campus of major violent crimes, including certain sex offenses, in an annual report of campus crime statistics. This statistical report does not include personally identifiable information.

- *Will my parents be told?*

Whether you are the Complainant or the Respondent, the College's primary relationship is to the student and not to the parent. However, in the event of major medical, disciplinary, or academic jeopardy, students are strongly encouraged to inform their parents. College officials may directly inform parents:

- when requested to do so by a student;
- if a health or safety emergency involves the student;
- if the student, under the age of 21, has violated any law or policy concerning the use and/or possession of alcohol or a controlled substance;
- if the student is at risk of being removed from College housing or suspended or dismissed from the College;
- if the student has been found responsible for a serious violation of the Student Code of Conduct or College Housing Policies;
- if the Vice President for Student Life and/or Dean of Students deems there are special circumstances that are in the best interest of the student and College to notify the parent;
- if the student has signed the “Authorization to Release Academic/Conduct Information” form at registration which allows such communication;
- or in other situations as allowed by law.

- *Will the Respondent know my identity?*

Yes, if you want formal disciplinary action to be taken against the alleged Respondent. Sexual misconduct is a serious offense and the Respondent has the right to know the identity of the Complainant. If there is a hearing, the College does provide options for questioning without confrontation.

- *Do I have to name the perpetrator?*

Yes, if you want formal disciplinary action to be taken against the alleged Respondent. No, if you choose to respond informally and do not file a formal complaint (but you should consult the complete confidentiality policy above to better understand the College’s legal obligations depending on what information you share with different College officials). Complainants should be aware that not identifying the perpetrator may limit the institution’s ability to respond comprehensively.

- *What do I do if I am accused of sexual misconduct?*

DO NOT contact the Complainant. You may immediately want to contact a staff or faculty member of your choosing who can act as your advisor. You may also contact the Dean of Students Office, which can explain the College’s procedures for addressing sexual misconduct complaints. You may also want to talk to a confidential counselor at the counseling center or seek other community assistance.

- *Will I (as a victim) have to pay for counseling/or medical care?*

Not typically, if the institution provides these services already. If a Complainant is accessing community and non-institutional services, payment for these will be subject to state/local laws, insurance requirements, etc.

- *What about changing residence hall rooms?*

If you want to move, you may request a room change. Room changes under these circumstances are considered emergencies. It is typically institutional policy that in emergency room changes, the student is moved to the first available suitable room. If you want the accused individual to move, and believe that you have been the victim of sexual misconduct, you must be willing to pursue a formal College complaint. No contact orders can be imposed and room changes for the accused individual can be arranged. Other accommodations available to you might include:

- Assistance from College support staff in completing the relocation;
- Arranging to dissolve a housing contract and pro-rating a refund, if appropriate;
- Assistance with or rescheduling an academic assignment (paper, exams, etc.);
- Taking an incomplete in a class;
- Assistance with transferring class sections;
- Temporary withdrawal;
- Assistance with alternative course completion options;
- Other accommodations for safety as necessary.

- *What should I do about preserving evidence of a sexual assault?*

Police are in the best position to secure evidence of a crime. Physical evidence of a criminal sexual assault must be collected from the alleged victim's person within 120 hours, though evidence can often be obtained from towels, sheets, clothes, etc., for much longer periods of time. If you believe you have been a victim of a criminal sexual assault, you should contact either the College Police at campus extension 3333 or the Sexual Assault Victims' Advocate at (740) 434-3457 before washing yourself or your clothing. The Sexual Assault Victims' Advocate can accompany you to the hospital, and College Police can provide you with transportation. If a victim goes to the hospital, local police will be called, but s/he is not obligated to talk to the police or to pursue prosecution. Having the evidence collected in this manner will help to keep all options available to a victim, but will not obligate him or her to any course of action. Collecting evidence can assist the authorities in pursuing criminal charges, should the victim decide later to exercise it.

- *Will a victim be sanctioned when reporting a sexual misconduct policy violation if he/she has illegally used drugs or alcohol?*

No. The severity of the infraction will determine the nature of the College's response, but whenever possible the College will respond educationally rather than punitively to the illegal use of drugs and/or alcohol. The seriousness of sexual misconduct is a major concern, and the College does not want any of the circumstances (e.g., drug or alcohol use) to inhibit the reporting of sexual misconduct.

- *Will the use of drugs or alcohol affect the outcome of a sexual misconduct complaint?*

The use of alcohol and/or drugs by either party will not diminish the accused individual's responsibility. On the other hand, alcohol and/or drug use is likely to affect the Complainant's memory and, therefore, may affect the outcome of the complaint. A person bringing a complaint of sexual misconduct must either remember the alleged incident or have sufficient circumstantial evidence, physical evidence and/or witnesses to prove his/her complaint. If the Complainant does not remember the circumstances of the alleged incident, it may not be possible to impose sanctions on the Respondent without further corroborating information. Use of alcohol and/or other drugs will never excuse a violation by a Respondent.

- *What should I do if I am uncertain about what happened?*

If you believe that you have experienced sexual misconduct but are unsure of whether it was a violation of the institution's sexual misconduct policy, you should contact the institution's Sexual Assault Victims' Advocate at (740) 434-3457. The institution provides advisors who can help you to define and clarify the event(s) and advise you of your options.

Marietta College Sexual Misconduct Grievance and Investigation Process

Where to Report:

Students who wish to report a concern or complaint relating to discrimination or harassment may do so by reporting the concern to the College Title IX Coordinator: Dr. Richard Danford, Marietta College, 215 Fifth Street, Marietta, OH 45750, telephone (740) 376-4899, or e-mail danfordr@marietta.edu.

Individuals with complaints of this nature also always have the right to file a formal complaint with the United States Department Education:

Office for Civil Rights, *Cleveland Office*

U.S. Department of Education

600 Superior Ave. East, Suite 750

Cleveland, OH 44114-2611

Telephone: 216-522-4970

Fax: 216-522-2573

TDD: 877-521-2172

E-mail: OCR.Cleveland@ed.gov

Web: <http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>

PREFACE:

Marietta College's process for handling allegations of sexual misconduct involves an immediate initial investigation to determine if there is reasonable cause to believe the nondiscrimination policy has been violated. If so, the College will initiate a prompt, thorough and impartial investigation. This investigation is designed to provide a fair and reliable determination about whether the College nondiscrimination policy has been violated. If so, the College will implement a prompt and effective remedy designed to end the discrimination, prevent its recurrence and address its effects.

Formal and Informal Grievance Procedure for Student Complaints

This procedure is intended to apply to student grievances against employees, employee civil rights grievances against students, student-on-student civil rights grievances, student grievances against visitors or guests, and guest or visitor grievances against students. All other grievances by students against students or employees against students will be addressed through the student conduct procedures located elsewhere in this *Code*.

In the event that an employee is taking classes or should a student also be an employee (as in the case of work-study, a TA, an RA, etc.), procedures applicable to employee-on-employee grievances through the Department of Human Resources may also be applicable. It is the practice of this institution to bring employee and student grievance mechanisms together for joint resolution in such cases. Sanctions may result in an individual's capacity as a student, as an employee, or both.

Informal Dispute Resolution Efforts: A Useful First Step before Filing Formal Complaints

In cases other than sexual assault, before pursuing the formal complaint process, every reasonable effort should be made to constructively resolve issues with faculty, staff, or administrators, including following procedures for formal appeal. Whenever possible and safe, the problem or complaint should first be discussed with the individual involved in the complaint. If satisfactory resolution is not reached after discussion with the individual, the student should contact the individual's direct supervisor to attempt to resolve the complaint. If these efforts are unsuccessful, the formal complaint process may be initiated. The College does not require a student to contact the person involved or that person's supervisor if doing so is impracticable, or if the student is uncomfortable or believes that the conduct cannot be effectively addressed through informal means.

Formal Grievance Process:

1. INTRODUCTION

Formal complaints of sexual misconduct by a student are made to the Title IX Coordinator, (740) 376-4899. When a complaint of sexual misconduct is filed with the Title IX Coordinator,

the Coordinator will designate two (2) Investigators to investigate the complaint. The Investigators will be selected from a pool of faculty and staff members who have received training on investigating alleged cases of sexual misconduct and Title IX.

2. FACT-FINDING INQUIRY

Following receipt of a complaint, the Investigators will gather relevant evidence to determine whether sexual misconduct rules were violated. This inquiry should normally be completed within fourteen (14) calendar days. If the inquiry cannot be completed within that time, the Investigators will inform the Complainant and the Respondent.

The inquiry generally shall include interviews with the parties if available, interviews with other witnesses as needed, and a review of relevant documents (including social media) as appropriate. Disclosure of facts to parties and witnesses shall be limited to what is reasonably necessary to conduct a fair and thorough inquiry. The parties should aspire to protect the integrity of the inquiry and treat the matter with discretion and judgment. The inquiry process is not open to the public.

The student accused of sexual misconduct (the Respondent) will be notified in writing by the Investigators of the allegations and to explain the judicial procedures for allegations of sexual misconduct. The Respondent has the right to meet with the Investigators and tell his/her side of the story, to submit documents and other relevant evidence for consideration by the Investigators, to bring an advisor to the meeting with the Investigators, and to identify witnesses who may have information relevant to the complaint.

While the Investigator's inquiry is pending, the Complainant and the Respondent each have the right to know, upon request, the status of the inquiry.

At any time during the inquiry, the Investigators may recommend that interim protections or remedies for the Complainant be provided by appropriate College officials. These protections or remedies may include, but are not limited to, separating the parties, placing limitations on contact between the parties, or making alternative working or housing arrangements. Failure to comply with the terms of interim protections may be considered a separate violation of the Sexual Misconduct Policy.

3. DECISION BY THE INVESTIGATORS

Upon completing the inquiry, the Investigators will make a determination as to whether the Respondent violated the sexual misconduct policy, and if so, what sanctions are applicable. The standard of proof the Investigators will use in making this determination is preponderance of evidence.

The Investigators may recommend to resolve the complaint in one of three ways: (1) a recommendation to dismiss the sexual misconduct allegations without sanctions; (2) a finding by the Investigators that the Respondent violated the sexual misconduct policy (and possibly other policies) and sanctions other than suspension or expulsion should be imposed (e.g. removal from College housing, probation, etc.); (3) a finding by the Investigators that the Respondent violated the sexual misconduct policy (and possibly other policies) and suspension/expulsion should be imposed.

The findings will be presented to both the Complainant and the Respondent in the form of a letter. The Respondent and/or the Complainant have the choice to accept the findings of the Investigators, and the presented sanctions, if applicable, or they can reject the findings and presented sanctions. If the Respondent and/or the Complainant disagree with either the findings of the Investigators, or the proposed sanctions, if applicable, they must present to the Investigators, in writing within three (3) calendar days that they reject this finding and wish to have the case resolved by the Critical Issues Board. Upon receipt of this written request, the Investigators will compile all relevant materials related to the inquiry and provide them to the Dean of Students. The Dean of Students will conduct resolution of the complaint through the Critical Issues Board. If the Respondent and/or the Complainant accept the findings and any applicable sanctions, they will not be eligible to appeal the decision.

4. DISMISSAL OF COMPLAINT

If, after completing the inquiry, the Investigators determine that the preponderance of evidence does not show that the Respondent violated the sexual misconduct policy, they shall make the recommendation to dismiss the sexual misconduct allegations. If the Investigators recommend dismissal of the sexual misconduct allegations, but determine that the Respondent may have violated other, non-sexual misconduct policies, they shall refer the matter to the Dean of Students for further proceedings and possible sanctions imposed for the Student Code of Conduct violations.

The findings of fact shall be summarized in a letter to the Respondent with a note explaining that the Complainant has the opportunity to appeal the finding. The Investigators shall inform the Complainant in writing of the outcome of the inquiry. The Investigator's letter to the Complainant shall reference the judicial procedures for allegations of sexual misconduct and set a deadline of three (3) calendar days after the letter is sent for rejecting the Investigator's recommendation, and requesting a hearing before the Critical Issues Board. If the Complainant rejects the finding of non-responsibility, they must present to the Investigators, in writing, that they reject this finding and wish to have the case resolved by the Critical Issues Board. Upon receipt of this written request, the Investigators will compile all relevant materials related to the inquiry and provide it to the Dean of Students, at which point the case will be resolved by the Critical Issues Board.

If this deadline passes without a request for review, the decision to dismiss will become final. In this event, the Investigators shall inform the Respondent and the Complainant that the complaint is considered resolved.

If the case is to be dismissed, a copy of the report, with information related to third parties deleted, will be sent to the Complainant, the Respondent, and kept in the Title IX Coordinator's files.

5. FORMAL HEARING CHARGE PROCEDURE

In those cases where the complaint is remanded to the Dean of Student, the Critical Issues Board (CIB) will resolve the complaint.

The Critical Issues Board is comprised of one staff member, one faculty member and one student. The Dean of Students or his/her designee is a permanent ex-officio member and serves as the CIB Administrator. The presiding officer shall be a faculty or staff member appointed by the members of the Board. Members serve a one-year term following their selection and ending on May 31st of the following year. The Faculty Council shall select faculty members. Other members shall be selected by the Dean of Students or his/her designee from a group of administrators, staff, and students who are trained in Marietta's disciplinary processes and Title IX.

Critical Issues Board Hearings are conducted according to the following guidelines:

1. Respondents shall be given notice of the pre-hearing date and the specific charges against them at least two (2) calendar days in advance.
2. Respondents shall be given notice of their formal hearing date at least five (5) calendar days in advance.
3. The Complainant and the Respondent shall be given the opportunity to view all documents prior to their hearing or as information is presented to the Board.
4. The Complainant and the Respondent shall have the right to review members of the pool for the Critical Issues Board. If there is a member of the pool they wish to eliminate for consideration as a member of the Board, they must present significant and pertinent information that supports the request.
5. Hearings shall be conducted in private.
6. The Complainant and the Respondent have the right to be assisted by an advisor. The advisor shall be a College faculty or staff member. Attorneys and parents/guardians of the Complainant and Respondent are not permitted to be present in hearings. The Complainant

and/or the Respondent is responsible for presenting his/her own case and, therefore, the advisor is not permitted to speak or participate directly in any hearings before the Board.

7. The Complainant and Respondent will be kept in separate rooms during the hearing.

8. Pertinent records, exhibits, written statements and witnesses may be accepted as evidence for consideration by the Board at the discretion of the Board Administrator.

9. The Board examines all witnesses and both the Complainant and Respondent may request the Board to ask certain questions, which the Board, in its discretion, may elect to do.

10. All procedural questions are subject to the final decision of the Administrator of the Board.

11. After the hearing the Board shall determine, by a preponderance of evidence and majority vote, whether the Respondent is responsible for each alleged violation of the Code.

12. A tape recording of the hearing will be made to ensure accuracy of all proceedings. The record shall be the property of the College and housed in the Office of the Dean of Students.

13. If the Respondent fails to appear for a scheduled hearing, evidence in support of the charges shall be presented and considered by the Board.

6. INTERIM DISCIPLINARY PROCEDURES

In the event that the academic calendar prevents a timely hearing by the Critical Issues Board, the following procedure will be used. The investigation will occur and complaints will be resolved through the administrative hearing process which allows for the Dean of Students or his/her designee to hear and render a decision on the case. Appeals of decisions made by the Dean of Students in these situations are heard by the Vice President for Student Life, whose decision in the matter is final.

7. POST-HEARING APPEALS

Appeals are permitted in all aspects of the student conduct system, and both the Complainant and the Respondent have the right to appeal a decision made by the Critical Issues Board.

Appeals of the Critical Issues Board are made to the Vice President for Student Life or his/her designee and are heard by the Discipline Appeals Board. Requests for appeals must be submitted by the Complainant or the Respondent in writing to the Vice President for Student Life or his/her designee within three (3) calendar days of the mailing of the letter notifying the Respondent and the Complainant of the findings and imposed sanctions. Failure to appeal within the allotted time will render the original finding and imposed sanctions final and conclusive.

Appeal Criteria:

Appeals to the Vice President for Student Life must meet one of the following criteria:

- A. Established administrative procedures were not followed that would have a **significant** impact on the outcome of the hearing.
- B. New evidence that was not available or could not have been discovered through diligent investigation before or during the hearing that merits or warrants reevaluation of the case and that would have a **significant impact** on the outcome of the hearing.
- C. The sanction(s) imposed were **clearly disproportionate** to the violation found. This criterion is only to be considered in cases where the sanction is suspension or expulsion.

Discipline Appeals Board (DAB):

The Discipline Appeals Board shall be composed of one faculty member, one staff member, and one student selected by the Dean of Students or his/her designee from a group of faculty, administrators, staff and students who are trained in Marietta's disciplinary procedures and Title IX. The Dean of Students or his/her designee is a permanent ex-officio member and serves as the DAB Administrator.

On appeal, the Discipline Appeals Board may:

- A. Affirm the finding and impose the sanctions of the Critical Issues Board.
- B. Remand the case to the presiding officer of the Critical Issues Board to reconsider the Board's finding or sanction, or conduct a new Critical Issues Board Hearing if one of the three appeal criteria is present.

If the case is remanded to the presiding officer of the Critical Issues Board, the Board will reconvene within three (3) business days to review the matter and then report its findings to the Vice President for Student Life who shall notify the Complainant or Respondent and appropriate College personnel by letter of the finding regarding the appeal.

An appeal of the decision of the Discipline Appeals Board following remand must be filed in writing within two (2) calendar days to the Vice President for Student Life. The appeal must cite one or more of the appeal criteria listed above. The decision of the Vice President for Student Life is final.

8. SANCTIONS

Examples of sanctions for students found to be responsible for sexual misconduct include, but are not limited to: expulsion, suspension, interim suspension, loss of College housing, restrictions, loss of privileges, or restitution. Mediation (i.e., bringing the parties together) cannot be used as a remedy in cases of sexual misconduct.

9. REPORT

An inquiry will result in a written report that, at a minimum, includes a statement of the allegations and issues, the positions of the parties, a summary of the evidence, findings of fact, and a determination by the Investigators as to whether College policy has been violated. The report may also recommend actions to resolve the complaint, including educational programs, remedies for the Complainant, and other sanctions as appropriate.

If a complaint is remanded to the Critical Issues Board, the case records will be maintained in the Office of Student Life.

STATEMENT OF THE RIGHTS OF THE COMPLAINANT

- The right to investigation and appropriate resolution of all credible complaints of sexual misconduct made in good faith to College administrators;
- The right to be treated with respect by College officials;
- The right of both Complainant and Respondent to have the same opportunity to have others present (in support or advisory roles) during a campus disciplinary hearing;
- The right not to be discouraged by College officials from reporting an assault to both on-campus and off-campus authorities;
- The right to be informed of the outcome and sanction of any disciplinary hearing involving sexual assault, usually within 24 hours of the end of the conduct hearing;
- The right to be informed by College officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the student so chooses. This also includes the right not to report, if this is the victim's desire;
- The right to be notified of available counseling, mental health, or student services for victims of sexual assault, both on campus and in the community;
- The right to notification of, options for, and available assistance in, changing academic and living situations after an alleged sexual assault incident, if so requested by the victim and if such changes are reasonably available (no formal complaint or investigation, campus or criminal, need occur before this option is available). Accommodations may include:
 - Change of an on-campus student's housing to a different on-campus location;
 - Assistance from College support staff in completing the relocation;
 - Arranging to dissolve a housing contract and pro-rating a refund;
 - Exam (paper, assignment) rescheduling;

- Taking an incomplete in a class;
 - Transferring class sections;
 - Temporary withdrawal;
 - Alternative course completion options.
- The right not to have irrelevant prior sexual history admitted as evidence in a campus hearing;
 - The right **not** to have any complaint of sexual assault mediated (as opposed to adjudicated);
 - The right to make a victim-impact statement at the campus conduct proceeding and to have that statement considered by the board in determining its sanction;
 - The right to a campus “no contact” order against another student who has engaged in or threatens to engage in stalking, threatening, harassing or other improper behavior that presents a danger to the welfare of the complaining student or others;
 - The right to have complaints of sexual misconduct responded to quickly and with sensitivity by campus law enforcement.
 - The right to appeal the finding and sanction of the conduct body, in accordance with the standards for appeal established by the institution;
 - The right to review all documentary evidence available regarding the complaint, subject to the privacy limitations imposed by state and federal law, at least 48 hours prior to the hearing;
 - The right to be informed of the names of all witnesses who will be called to give testimony, within 48 hours of the hearing, except in cases where a witness’ identity will not be revealed to the accused individual/Respondent for compelling safety reasons (this does not include the name of the alleged victim/Complainant, which will always be revealed);
 - The right to preservation of privacy, to the extent possible and allowed by law;
 - The right to a hearing closed to the public;
 - The right to petition that any member of the conduct body be removed on the basis of demonstrated bias;
 - The right to bring a victim advocate or advisor to all phases of the investigation and campus conduct proceeding;

- The right to give testimony in a campus hearing by means other than being in the same room with the accused individual;
- The right to provide investigators with the names of witnesses and relevant questions;
- The right to be fully informed of campus conduct rules and procedures as well as the nature and extent of all alleged violations contained within the complaint;
- The right to have the College arrange the presence of student, faculty and staff witnesses, and the opportunity (if desired) to ask questions, directly or indirectly, of witnesses present (including the accused individual), and the right to challenge documentary evidence.
- The right to be present for all testimony given and evidence presented before the conduct body;
- The right to have complaints heard by conduct and appeals officers who have received annual sexual misconduct and Title IX training;
- The right to a conduct panel comprised of representatives of both genders;
- The right to have College policies and procedures followed without material deviation;
- The right to be informed in advance of any public release of information regarding the complaint;
- The right to written notice of the outcome and sanction of the hearing.

STATEMENT OF THE RIGHTS OF THE RESPONDENT

- The right to investigation and appropriate resolution of all credible complaints of sexual misconduct made in good faith to College administrators against the accused individual;
- The right to be treated with respect by College officials;
- The right to be informed of and have access to campus resources for medical, counseling, and advisory services;
- The right to be fully informed of the nature, rules and procedures of the campus conduct process and to timely written notice of all alleged violations within the complaint, including the nature of the violation and possible sanctions;

- The right to a hearing on the complaint, including timely notice of the hearing date, and adequate time for preparation;
- The right not to have irrelevant prior sexual history admitted as evidence in a campus hearing;
- The right to make an impact statement at the campus conduct proceeding and to have that statement considered by the board in determining its sanction;
- The right to appeal the finding and sanction of the conduct body, in accordance with the standards for appeal established by the institution;
- The right to review all documentary evidence available regarding the complaint, subject to the privacy limitations imposed by state and federal law, at least 48 hours prior to the hearing;
- The right to be informed of the names of all witnesses who will be called to give testimony, within 48 hours of the hearing, except in cases where a witness' identity will not be revealed to the accused individual/Respondent for compelling safety reasons (this does not include the name of the alleged victim/Complainant, which will always be revealed);
- The right to a hearing closed to the public;
- The right to petition that any member of the conduct body be removed on the basis of bias;
- The right to have the College arrange the presence of student, faculty and staff witnesses, and the opportunity to ask questions, directly or indirectly, of witnesses present, and the right to challenge documentary evidence.
- The right to have complaints heard by conduct and appeals officers who have received annual sexual misconduct adjudication and Title IX training;
- The right to have College policies and procedures followed without material deviation;
- The right to have an advisor or advocate to accompany and assist in the campus hearing process. This advisor can be anyone, with the exception of legal counsel. The advisor may not take part directly in the hearing itself, though they may communicate with the accused individual as necessary;
- The right to a fundamentally fair hearing, as defined in these procedures;

- The right to a campus conduct outcome based solely on evidence presented during the conduct process. Such evidence shall be credible, relevant, based in fact, and without prejudice;
- The right to written notice of the outcome and sanction of the hearing;
- The right to a conduct panel comprised of representatives of both genders;
- The right to be informed in advance, when possible, of any public release of information regarding the complaint.

No amendment or revision to this document shall be effective until it has been approved by a two-thirds vote of Faculty Council, a two-thirds vote of Student Senate, approval by the President, and approval by the Board of Trustees.

Approved by Student Senate, April 18, 2012

Approved by Faculty Council, April 23, 2012

Approved by the President, April 24, 2012

Approved by the Board of Trustees, May 11, 2012

Coordinator's Name Updated March 25, 2015

Master Document maintained in the office of the Title IX Coordinator