



## **SEXUAL MISCONDUCT POLICY AND APPENDICES**

### **1. Introduction and Notice of Nondiscrimination**

Molloy University (the “University” or “Molloy”) is committed to a learning, working, and living environment where all members of the community feel safe and respected. In accordance with Title IX of the Education Amendments of 1972 (“Title IX”), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”), as amended by the Violence Against Women Act of 2013 (“VAWA”), Article 129-B of the New York State Education Law (“Article 129-B”), the New York State Labor Law, the New York State Human Rights Law (“NYSHRL”), Title VII of the Civil Rights Act of 1964 (“Title VII”), the New York City Stop Sexual Harassment Act, and all other applicable law, the University is committed to providing a safe community, free from all forms of sex discrimination, including sexual harassment. In accordance with Title IX and its implementing regulations, the University does not discriminate on the basis of sex in its education programs and activities, including in admissions and employment. Under Title IX, discrimination on the basis of sex includes sexual harassment.

The University will not tolerate any form of sexual misconduct including: all forms of sex/gender-based discrimination, sex/gender-based harassment, sexual harassment, sexual assault, dating violence, domestic violence, stalking, and any other form of non-consensual sexual activity or related misconduct prohibited by this Policy, as well as retaliation as defined in this Policy (collectively referred to as “sexual misconduct”). All forms of sexual misconduct are strictly prohibited by the University. Sexual misconduct can occur between strangers, acquaintances, or people who know each other well, including those who are involved in an intimate or sexual relationship, and can be committed by anyone regardless of sex, gender, or gender identity. Likewise, anyone can experience sexual misconduct regardless of sex, gender, sexual orientation, gender identity, including transgender status, or gender expression. Any member of the Molloy community who engages in sexual misconduct or retaliation will be subject to remedial and/or disciplinary action, up to and including dismissal or termination.

The purpose of this Policy is twofold: first, to establish clear processes and procedures for the handling of sexual misconduct allegations, and second, to educate the Molloy community with respect to the limits of acceptable conduct and available resources. This Policy explains Molloy’s approach to investigating, adjudicating, and disciplining acts of sexual misconduct, and is part of Molloy’s commitment to a discrimination-free learning and work environment.

Any inquiries about the application of Title IX and related issues of sex discrimination may be referred to the University's Title IX Coordinators, the U.S. Department of Education's Assistant Secretary for Civil Rights, or both.

Lisa Miller  
Title IX Coordinator  
Assistant Vice President of Human Resources

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U.S. Department of Education  
Office for Civil Rights (OCR)  
400 Maryland Avenue, SW Molloy University  
Washington, D.C. 20202-1100  
Telephone: 1-800-421-3481  
*Phone:* 1-800-421-3481  
Fax: 202-453-6012;  
TDD: 1-800-877-8339  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)

Deputy Title IX Coordinators:

Michael Grasso  
Associate AD for Compliance

Molloy University  
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Wilbur Hall, Room 025  
Rockville Centre, NY 11571  
Telephone: 516-323-3602  
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Marion Flomenhaft  
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Questions may also be directed to the OCR's New York office email at [ocr.newyork@ed.gov](mailto:ocr.newyork@ed.gov) or [telephone number at \(646\) 428-3800](tel:6464283800).

## **2. Scope of the Policy**

This policy (the "Policy") aims to ensure that all members of the Molloy community can study and work together without being subjected to sexual misconduct. In this Policy, the term "Molloy community" is used to refer to students, faculty, staff, and administrators ("Employees"), contractors, subcontractors, vendors, and others affiliated with the University by reason of employment ("covered non-employees") or education and within the University's control, regardless of immigration status. Despite the gendered nature of its language, this Policy is inclusive of all members of the Molloy community.

This Policy is effective as of August 14, 2020. All conduct that occurred prior to August 14, 2020, will be subject to the Molloy University Sexual Misconduct Policy in effect at the time that the conduct occurred, regardless of when the report, complaint, or formal complaint regarding such conduct is filed.

This Policy applies to all allegations of sexual misconduct and related retaliation involving members of the Molloy community, and to such individuals regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, criminal conviction, or other legally protected status. To the extent practicable, this Policy applies to visitors and third Parties who are on campus or participating in a university- sponsored program, activity, or event and are within the University's control.

This Policy covers conduct that occurs in an education program or activity of the University, which includes all of the operations of Molloy,<sup>1</sup> such as academics, extracurricular activities, and athletics, and may also include computer and internet networks, digital platforms, and computer hardware or software owned by, operated by, or used in the operations of the University. This Policy governs conduct that occurs on any part of Molloy's campus or property and also applies when any member of the Molloy community travels off-campus as part of a University activity, team, organization, or event and when employees are traveling for business. This Policy also covers conduct that takes place off-campus that has a reasonable connection to the University and has a continuing effect on campus or in an off-campus education program or activity. Calls, texts, emails, and social media usage by members of the Molloy community can constitute unlawful workplace sexual harassment, even if they occur away from the campus, on personal devices, or during non-work hours.

*This Policy supersedes any other University policy to the extent that such policy applies to sexual misconduct or sex discrimination.* Complaints of discrimination or harassment that do not involve sexual misconduct (e.g., race, disability, age) are governed by the University's Non- Discrimination and Anti-Harassment Policy. More information on the University's Anti- Harassment Policy and Procedure is available [here](#).<sup>2</sup> An individual who has a question about which policy applies in a specific instance should contact the Title IX Coordinator.

An individual, who, in good faith, brings a reasonable report, complaint, or formal complaint of a suspected violation of this Policy, even if it may be found to be erroneous or the Respondent is ultimately found not responsible, will not be subject to discipline. However, the use of this Policy for false, malicious, or frivolous purposes is strictly prohibited. Anyone who knowingly brings a false, malicious, or frivolous report, complaint, or formal complaint against another Molloy community member may be subject to disciplinary action. Similarly, anyone who knowingly provides false, malicious, or frivolous information during an informal resolution or formal grievance process, including during the investigation and hearing, may be subject to disciplinary action.

<sup>1</sup> For the purposes of 34 CFR §§ 106.30, 106.44, and 106.45, "education program or activity" includes locations, events, or circumstances over which Molloy exercised substantial control over both the Respondent and the context in which the sexual misconduct occurs, and any building owned or controlled by a student organization that is officially recognized by Molloy.

<sup>2</sup> This Policy supersedes any conflicting information contained in those policies, if applicable, with respect to the definitions or procedures relating to sexual misconduct and related retaliation.

Conduct that violates the University policy may also violate New York State laws and subject the Respondent to criminal prosecution. Sex Offenses under New York law are described in Sections 130.00 to 130.96 of the New York State Penal Code, available at <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO>.

### **3. Applicable Procedures Under This Policy**

There are two formal grievance procedures for responding to reports of prohibited conduct under this Policy. Allegations of Title IX sexual harassment, as defined herein, will be resolved via Process A. All other allegations of sexual misconduct and retaliation, as defined herein, that do not constitute Title IX sexual harassment will be resolved via Process B. The University applies the preponderance of the evidence (“more likely than not”) standard when determining whether this Policy has been violated. An informal resolution process may also be available to resolve the allegations.

### **4. The Title IX Coordinator**

Any disclosure regarding alleged Policy violations, including information, reports, complaints, and formal complaints, as well as any questions or concerns regarding this Policy or the state and federal laws covered in this Policy should be directed to the University’s Title IX Coordinator.<sup>3</sup> Any member of the University who believes that they have been a victim of sexual misconduct is encouraged to immediately report it to the University’s Title IX Coordinator.

Lisa Miller, Assistant Vice President of Human Resources and Title IX Coordinator 1000 Hempstead Avenue, Kellenberg Hall, Room K-011 Rockville Centre, New York 11571 (516) 323-3046  
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The Title IX Coordinator’s primary responsibility is to coordinate the University’s compliance with Title IX including, but not limited to, overseeing the University’s response to reports, complaints, and formal complaints of sexual misconduct. The Title IX Coordinator is responsible for directing and managing the investigations of allegations of sexual misconduct, identifying and addressing any patterns or systemic problems of sexual misconduct that arise during the investigation, and assessing the effects of sexual misconduct on the campus climate.

The Title IX Coordinator is also available to answer questions or address any concerns regarding this Policy. Any necessary accommodations due to a disability for the processes outlined in this Policy can also be discussed with the Title IX Coordinator or Section 504 Coordinator, Cari Rose Tomo, who will handle such requests pursuant to University policy. The Title IX Coordinator will

<sup>3</sup> The University provides the contact information of the Title IX Coordinator to students, faculty, staff, applicants for admission, applicants for employment, and all labor unions or professional organizations holding collective bargaining or professional agreements with the University.

not have a conflict of interest or bias. Allegations regarding bias or conflict of interest of the Title IX Coordinator should be addressed to Dr. Susan Williams, Vice President for Finance and Treasurer. Reports, complaints, or formal complaints where the Title IX Coordinator is the Respondent should be made to Dr. Susan Williams, Vice President for Finance and Treasurer.

## **5. Students' Bill of Rights**

All Students have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure from the institution;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few University representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by the institution, any student, the accused and/or the Respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
9. Access to at least one level of appeal of a determination;
10. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or Respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.

(Adopted from Article 129-B § 6443)

## **6. Sexual Harassment Definitions**

Sexual harassment is an unlawful form of sex discrimination. The term "sexual harassment" has various definitions under federal and state laws, such as Title IX, Title VII, and NYSHRL, and by various bodies, including the U.S. Department of Education, the U.S. Equal Employment Opportunity Commission ("EEOC"), and New York State. Reports and formal complaints of Title IX sexual harassment are addressed under Process A of this Policy. Reports and complaints regarding conduct that constitutes only Title VII sexual harassment and/or NYSHRL sexual harassment are addressed under Process B of this Policy. Note, however, that conduct can meet more than one of these definitions; if the conduct constitutes

Title IX sexual harassment in addition to Title VII sexual harassment and/or NYSHRL sexual harassment, it will be addressed under Process A.

#### *A. Title IX Sexual Harassment*

Under Title IX, specifically 34 C.F.R. § 106.30, “sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual’s participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University’s education program or activity;<sup>4</sup> or
3. “Sexual assault” as defined in 20 U.S.C § 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. § 12291(a)(10), “domestic violence” as defined in 34 U.S.C. § 12291(a)(8), or “stalking” as defined in 34 U.S.C. § 12291(a)(30). Definitions for these terms are also provided in Appendix C.

To fall under Title IX, the sexual harassment must have been in an education program or activity of the University against a person in the United States. At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the University.

#### *B. Title VII Sexual Harassment*

Sexual harassment means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, *or* offensive working environment.

#### *C. NYSHRL Sexual Harassments*

Sexual harassment is offensive, is a violation of University policies, is unlawful, and may subject the University to liability for harm to targets of sexual harassment. Harassers may also be individually subject to liability. Employees of every level who engage in sexual harassment,

<sup>4</sup> Categories 1 and 3 do not require elements of severity, pervasiveness, and/or objective offensiveness. Severity, pervasiveness and objective offensiveness of Category 2 offenses must be evaluated in light of the known circumstances and depend on the facts of each situation, but must be determined from the perspective of a reasonable person standing in the shoes of the Complainant.

<sup>5</sup> The NYSHRL applies to all employees, applicants for employment, interns, whether paid or unpaid, contractors, and persons conducting business, regardless of immigration status, with Molloy; all must follow and uphold this Policy. Any employee or individual covered by this Policy who engages in sexual harassment or retaliation will be subject to remedial and/or disciplinary action.

including managers and supervisors who engage in sexual harassment or who allow such behavior to continue, will be penalized for such misconduct. Effective corrective action will be taken whenever sexual harassment is found to have occurred. All employees, including managers and supervisors, are required to cooperate with any internal investigation of sexual harassment.

All employees are encouraged to report any harassment or behaviors that violate this policy. Managers and supervisors are **required** to report any complaint that they receive, or any harassment that they observe or become aware of, to the Title IX Coordinator. Under the NYSHRL, “sexual harassment” is a form of sex discrimination and is unlawful under federal, state, and (where applicable) local law. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender. Sexual harassment is unlawful when it subjects an individual to inferior terms, conditions, or privileges of employment. Harassment need not be severe or pervasive to be unlawful and can be any harassing conduct that consists of more than petty slights or trivial inconveniences. Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual’s sex when:

1. Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive work environment, even if the reporting individual is not the intended target of the sexual harassment;
2. Such conduct is made either explicitly or implicitly a term or condition of employment; or
3. Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual’s employment.

A sexually harassing hostile work environment includes, but is not limited to, words, signs, jokes, pranks, intimidation or physical violence which are of a sexual nature, or which are directed at an individual because of that individual’s sex. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements or sexually discriminatory remarks made by someone which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, or which interfere with the recipient’s job performance.

Sexual harassment also occurs when a person in authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions or privileges of employment. This is also called “quid pro quo” harassment.

Any employee who feels harassed should report so that any violation of this Policy can be corrected promptly. Any harassing conduct, even a single incident, can be addressed under this Policy.

#### Examples of Sexual Harassment

The following describes some of the types of acts that may be unlawful sexual harassment and that are strictly prohibited:

- Physical acts of a sexual nature, such as:
  - o Touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee’s body or poking another employee’s body;

- o Rape, sexual battery, molestation or attempts to commit these assaults.
- Unwanted sexual advances or propositions, such as:
  - o Requests for sexual favors accompanied by implied or overt threats concerning the target's job performance evaluation, a promotion or other job benefits or detriments;
  - o Subtle or obvious pressure for unwelcome sexual activities.
- Sexually oriented gestures, noises, remarks or jokes, or comments about a person's sexuality or sexual experience, which create a hostile work environment.
- Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of a particular sex should act or look.
- Sexual or discriminatory displays or publications anywhere in the workplace, such as:
  - o Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials or other materials that are sexually demeaning or pornographic. This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity and the status of being transgender, such as:
  - o Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;
  - o Sabotaging an individual's work;
  - o Bullying, yelling, name-calling.

Sexual harassment can occur between any individuals, regardless of their sex or gender. NYSHRL protects employees, paid or unpaid interns, and non-employees, including independent contractors, and those employed by companies contracting to provide services in the workplace. Harassers can be a superior, a subordinate, a coworker or anyone in the workplace including an independent contractor, contract worker, vendor, client, customer or visitor.

Unlawful sexual harassment is not limited to the physical workplace itself. It can occur while employees are traveling for business or at employer sponsored events or parties. Calls, texts, emails, and social media usage by employees can constitute unlawful workplace harassment, even if they occur away from the workplace premises, on personal devices or during non-work hours.

Preventing sexual harassment is everyone's responsibility. The University cannot prevent or remedy sexual harassment unless it knows about it. Any member of the Molloy community who has been subjected to behavior that may constitute sexual harassment is encouraged to report such behavior to the Title IX Coordinator, or to a supervisor or manager. Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior immediately

Reports of sexual harassment may be made verbally or in writing. A form for submission of a written complaint is attached to this Policy as *Appendix A*, and all employees are encouraged to use this complaint form. Employees who are reporting sexual harassment on behalf of other employees should use the complaint form and note that it is on another employee's behalf. Employees, paid or unpaid interns or non-employees who believe they have been a target of sexual harassment may also seek assistance in other available forums, as explained below in the section on Legal Protections.



All supervisors and managers who receive a complaint or information about suspected sexual harassment, observe what may be sexually harassing behavior or for any reason suspect that sexual harassment is occurring, **are required** to report such suspected sexual harassment to the Title IX Coordinator. In addition to being subject to discipline if they engaged in sexually harassing conduct themselves, supervisors and managers will be subject to discipline for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue. Supervisors and managers will also be subject to discipline for engaging in any retaliation.

*All* complaints or information about sexual harassment will be investigated, whether that information was reported in verbal or written form. Investigations will be conducted in a timely manner, and will be confidential to the extent possible. An investigation of any complaint, information or knowledge of suspected sexual harassment will be prompt and thorough, commenced immediately and completed as soon as possible. The investigation will be kept confidential to the extent possible. All persons involved, including Complainants, witnesses and Respondents will be accorded due process, as outlined below, to protect their rights to a fair and impartial investigation. Any employee may be required to cooperate as needed in an investigation of suspected sexual harassment. The University will not tolerate retaliation against employees who file complaints, support another's complaint or participate in an investigation regarding a violation of this policy. NYSHRL sexual harassments claims will be handled as outlined below and in accordance with Process B.

### Legal Protections and External Remedies

Sexual harassment is not only prohibited by the University but is also prohibited by state, federal, and, where applicable, local law. Aside from the internal process at the University, employees may also choose to pursue legal remedies with the governmental entities discussed below in section XI(D). While a private attorney is not required to file a complaint with a governmental agency, you may seek the legal advice of an attorney. In addition to those outlined below, employees in certain industries may have additional legal protections.

## **7. Anti-Retaliation Policy**

*The University prohibits retaliation, as defined herein. Retaliation should be reported promptly to the University's Title IX Coordinator. Reports of retaliation will be investigated in accordance with the appropriate formal grievance procedure, and such conduct may result in disciplinary action independent of the sanction(s) or interim measures imposed in response to the underlying allegations of sexual misconduct.*

### *A. Title IX Retaliation<sup>6</sup>*

“Retaliation” means: intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with an individual’s right or privilege secured by Title IX and 34 C.F.R. Part 106, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under 34 C.F.R. Part 106. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or the corresponding regulations, constitutes retaliation.

The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this subsection of the Policy. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under 34 C.F.R. Part 106 does not constitute retaliation under this subsection of the Policy, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any Party made a materially false statement in bad faith.

### *B. Title VII Retaliation*

In accordance with Title VII, the University will not discriminate against any of its employees or applicants for employment because of the employee’s or applicant’s opposition to any practice made an unlawful employment practice by Title VII, or because the employee or applicant made a charge, testified, assisted, or participated in any investigation, proceeding, or hearing under Title VII.

### *C. NYSHRL Retaliation*

No employee covered by the NYSHRL Policy shall be subject to adverse action because the employee reports an incident of NYSHRL sexual harassment, provides information, or otherwise assists in any investigation of a NYSHRL sexual harassment complaint. The University will not tolerate such NYSHRL retaliation against anyone who, in good faith, reports or provides information about suspected NYSHRL sexual harassment. Any employee of the University who retaliates against anyone involved in a NYSHRL sexual harassment investigation will be subjected to disciplinary action, up to and including termination. All employees, paid or unpaid interns, or non-employees working in the workplace who believe they have been subject to such NYSHRL retaliation should inform a supervisor, manager, or the Title IX Coordinator. All employees, paid or unpaid interns, or non-employees who believe they have been a target of such NYSHRL retaliation may also seek relief in other available forums, as explained above in the section on Legal Protections.

<sup>6</sup> Complaints alleging retaliation that does not itself constitute Title IX sexual harassment may be filed according to the resolution processes for sex discrimination required to be adopted under 34 C.F.R. § 106.8(c), which is Process B under this Policy.

Unlawful retaliation can be any action that could discourage a worker from coming forward to make or support a NYSHRL sexual harassment claim. Adverse action need not be job-related or occur in the workplace to constitute unlawful retaliation (e.g., threats of physical violence outside of work hours). Such retaliation is unlawful under federal, state, and (where applicable) local law. The NYSHRL protects any individual who has engaged in “protected activity.” Protected activity occurs when a person has:

- Filed a complaint of sexual harassment, either internally or with any anti-discrimination agency;
- Testified or assisted in a proceeding involving sexual harassment under the Human Rights Law or other anti-discrimination law;
- Opposed sexual harassment by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of harassment;
- Reported that another employee has been sexually harassed; or
- Encouraged a fellow employee to report harassment.

Even if the alleged harassment does not turn out to rise to the level of a violation of law, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful. However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.

## **8. Limitation on Consensual Relationship**

In order to protect the integrity of the academic and work environment, this Policy places limitations on consensual romantic or sexual relationships between and among faculty, staff, and students. When individuals are involved in a consensual romantic or sexual relationship and are in positions of unequal authority or power, there is the potential for a conflict of interest, favoritism, and exploitation of power. University employees are prohibited from having sexual relations and/or romantically intimate or amorous relationships with any Molloy students. Anyone with supervisory authority or evaluative, mentoring authority who controls or influences another person’s employment, academic advancement, extracurricular or athletic team participation, scholarship or financial support, grades, recommendations, wage status, or promotion at the University cannot be in a romantic or sexual relationship with that person regardless of consent. If anyone is promoted into a position that results in a conflict with this Policy limiting consensual relationships, this information must be reported to a supervisor, Vice President, or the Assistant Vice President of Human Resources for assistance in resolving the conflict. Molloy will respond to all reports of prohibited or inappropriate sexual, amorous, or romantically intimate behavior and maintains discretion to determine consequences for violating this policy on consensual relationships, which may include but is not limited to termination from employment.

## **9. Confidentiality**

Molloy understands that Complainants may wish to talk about the incident with the assurance that the discussion will be confidential. Even if a person does not ask for confidentiality, these matters are considered private and are shared with a limited number of employees who have a “need to know” and are responsible for the University’s response, including taking appropriate steps to respond to the incident, to support Complainants, Respondents, and witnesses, and to resolve the matter promptly and

fairly. To the extent practicable and appropriate under the circumstances, investigatory and resolution procedures, including appeal procedures, shall be held in confidence to reasonably ensure the privacy of the Parties concerned and to offer as much protection as reasonably possible to the Parties involved.

Reporting individuals have the right to disclose confidentially an incident of sexual misconduct to institution representatives, who may offer confidentiality pursuant to applicable laws and can assist in obtaining services for reporting individuals. Reporting individuals also have the right to disclose confidentially an incident and obtain services from the state or local government. Confidentiality may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials. Licensed mental health counselors, medical providers, and pastoral counselors are examples of institution employees who may offer confidentiality.

#### *A. Professional Counselors*

The ability of University employees to maintain confidentiality is as follows:

**Professional Counselors:** A professional, licensed counselor whose official responsibilities include providing mental health counseling to the Molloy community, including one who acts in the role of providing mental health counseling under the supervision of a licensed counselor, is not required to report to the Title IX Coordinator without a Complainant's permission any information about an incident of sexual misconduct disclosed while acting within the scope of his/her license or certification. The following is a list of the University's professional counselors:

Talita Ferrara, M.S., L.M.H.C.  
1000 Hempstead Avenue  
Public Square Room, 030  
Rockville Centre, NY 11571-5002  
Phone: 516-323-3466

Email [tferrara@molloy.edu](mailto:tferrara@molloy.edu)

Kathryn Schwartz, M.S.W  
1000 Hempstead Avenue  
Public Square, Room 030  
Rockville Centre, NY 11571-5002  
Phone: 516-323-3466

Email: [kschwartz@molloy.edu](mailto:kschwartz@molloy.edu)

Students may meet with these professional counselors for free.

Employees have access to our EAP, Carebridge, which can be accessed at: 1.800.437.0911 or <https://www.myliferesource.com/mlro/mbLogon.aspx>. The Access Code is: 7PSCT.

State law requires professional counselors to report: (i) when an individual receiving counseling is likely to engage in conduct that would result in serious harm to that individual or to others; or (ii) if there is reasonable cause to suspect that a minor has been sexually abused.

#### *B. Responsible Employees: Mandatory Reporting*

A Responsible Employee is a University employee who is obligated under this Policy to share knowledge of incidents of sexual misconduct or related retaliation by employees or students to the Title IX Coordinator. A responsible employee must report all relevant details (obtained directly or indirectly) about the alleged sexual misconduct to the Title IX Coordinator. Such information includes dates, times, locations, and names of Parties and witnesses. ***\*If you are a University employee and are unsure whether or not information MUST be reported, please call the Title IX Coordinator, who will assist you with the proper next steps.*** Even University offices and employees who cannot guarantee

confidentiality will maintain privacy to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary for the Title IX coordinator to investigate and/or seek a resolution.

### *C. FERPA*

The Family Educational Rights and Privacy Act (“FERPA”) allows the University to share information with a student’s parents if there is a health or safety emergency or if the student is listed as a dependent on either parent’s prior year federal tax income form. However, the University will generally not share information about a report of domestic violence, dating violence, stalking, or sexual assault with parents without the permission of the reporting individual or Complainant.

### *D. Sexual Assault Public Awareness Events and Climate Surveys*

The University is not obligated to and will not begin an investigation based on information that a person chooses to share during public awareness events such as candlelight vigils, “Take Back the Night,” protests, or other public events. The University will take steps to ensure that answers to climate surveys remain anonymous and that no individual is identified. Results of the survey will be published on the University website provided that no personally identifiable information or information which can reasonably lead a reader to identify an individual shall be shared. Information discovered or produced as a result of the climate survey will not be subject to discovery or admitted into evidence in any federal or state court proceeding or considered for other purposes in any action for damages brought by a private Party against the University, unless, in the discretion of the court, any such information is deemed to be material to the underlying claim or defense.

### *E. Clery Reporting*

The University will make reports of certain crimes occurring in specific geographic locations that shall be included in the University’s Annual Security Report pursuant to the Clery Act, 20 USC

§ 1092(f), in an anonymized manner that identifies neither the specifics of the crime nor the identity of the reporting individual, including a Complainant. The University is obligated to and will issue timely warnings of crimes enumerated in the Clery Act occurring within relevant geography that are reported to campus security or local police agencies and that represent a serious or continuing threat to students and employees, except in those circumstances where issuing such a warning may compromise current law enforcement efforts or when the warning itself could potentially identify the reporting individual or Complainant. A reporting individual or Complainant will not be identified in a timely warning.

## 10. Resources for Victims of Sexual Misconduct

There is a wide range of resources available to provide support and guidance in response to any incident of sexual misconduct.

### A. *Immediate Medical Assistance and Counseling*

If you or someone you know is or may be the victim of any form of sexual misconduct, the University strongly urges you to seek immediate assistance in order to receive appropriate medical care and emotional support. Assistance is available 24 hours a day, 7 days a week, from:

- Local Police and Emergency Assistance - Call 911
- Local hospitals – Call 911 or Campus Security to obtain contact information
- SAFE Center LI – (516) 542-0404
- Safe Horizon Rape and Sexual Assault Hotline - (866) 689-HELP (4357)
- Safe Horizon Domestic Violence Hotline - (800) 621-HOPE (4673)
- New York State Office of Victim Services Toll Free Number – (800) 247-8035
- Mercy Medical Center, 1000 N Village Ave, Rockville Centre, NY 11570, (516) 705- 2525

### *Off-Campus -- 24/7 Confidential Hotlines (Free of Charge):*

- SAFE Center LI – (516) 542-0404
- RAPE Crisis Hotline – (914) 345-9111
- Safe Horizon Rape and Sexual Assault Hotline - (866) 689-HELP (4357)
- Safe Horizon Domestic Violence Hotline - (800) 621-HOPE (4673)
- Gay & Lesbian Anti-Violence Project – (212) 714-1141
- Crime Victim’s Hotline – (212) 577-7777
- New York State Domestic Violence Hotline - (800) 942-6906
- New York State Office of Victim Services - (800) 247-8035 or [www.ovs.ny.gov](http://www.ovs.ny.gov)

### B. *Sexual Assault Forensic Examiners*

In instances involving physical injury or sexual assault, the University strongly encourages the Complainant to obtain a medical examination to determine the extent of injuries. It is also important to understand that physical evidence collected in a rape examination (i.e., a rape kit) is a way to preserve evidence should anyone want to pursue criminal charges with the police or a local prosecutor at a later time. A hospital, with the Complainant’s permission, will collect physical evidence in a sexual offense evidence collection kit. Sexual Assault Nurse Examiners (SANE) are employed at the following hospital: Northshore University Hospital, 300 Community Dr, Manhasset, NY [11030, \(516\) 562-0100](http://www.nshu.edu). More information on this SANE program can be found [here](#).

Emergency Room advocacy is available in Nassau County through the Safe Center LI for all victims, at any age, of rape, sexual assault, and domestic violence. Trained advocates are available to meet sexual assault and domestic violence victims at all hospitals in Nassau County to offer crisis intervention,

counseling, support, information, and assistance while accompanying the victim as they undergo their medical procedures. This 24 hour, free and confidential service can be accessed by calling the hotline at **516-542-0404**.

The advocate can provide information about the health concerns and examinations, criminal justice system and trauma services. The advocate can also assist in linking the victims to on-going assistance.

### *C. University Counseling Resources*

Regardless of whether or not an official complaint or formal complaint of sexual misconduct is made, various counseling options are available from the University free of charge.

#### For Students:

On Campus: Student Personal Counseling 1000 Hempstead Avenue

Kellenberg Hall, Room 207

Rockville Centre, New York 11571-5002 Phone: 516-323-3484

#### Off Campus: SAFE Center LI

15 Grumman Road West, Suite 1000

Bethpage, NY 11714

Hotline: 516-542-0404

Phone: 516-465-4700

#### For Employees:

Employee Assistance Program: Carebridge Corporation 1.800.437.0911

or <https://www.myliferesource.com/mlro/mbLogon.aspx>. The Access Code is: 7PSCT.

## **11. External Reporting Procedures**

There are multiple ways to report prohibited conduct, both internal and external to the University. Reporting Parties have the right to disclose the incident to a University representatives who can offer privacy or confidentiality,<sup>7</sup> as appropriate, and can assist in obtaining resources for reporting individuals.

<sup>7</sup> Confidentiality may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials, in a manner consistent with state and federal law, including but not limited to 20 U.S.C. § 1092(f) and 20 U.S.C. § 1681(a). Privacy may be offered by an individual when such individual is unable to offer confidentiality under the law but shall still not disclose information learned from a reporting individual or bystander to a crime or incident more than necessary to comply with applicable laws or University Policy, including informing appropriate University officials.

### *A. Law Enforcement Notification*

The University strongly encourages you to promptly report alleged incidents of sexual misconduct to the police. It is important to preserve evidence as may be necessary to prove crimes or in obtaining an order of protection. Law enforcement can help ensure the preservation of evidence and facilitate a timely investigation and response. University representatives are available to assist you in notifying law enforcement of an incident of sexual misconduct and in contacting law enforcement or legal service organizations to learn about these remedies. An individual may also choose not to report an incident to law enforcement. Except in instances where the victim is under the age of 18, the University will respect a victim's decision regarding whether or not to report an incident to local law enforcement. Where an incident involves the suspected abuse of a minor, certain individuals at the University may have an obligation to report to law enforcement under New York State Law.

**A person may report an incident to either the police or the University or to both simultaneously.**

The University's complaint resolution procedures and the criminal justice system work independently from one another. The standard of proof used in the criminal justice system (beyond a reasonable doubt) is different from the standard of proof used in this Policy (preponderance of the evidence). Additionally, conduct may violate this Policy even if it does not constitute a crime. Thus, law enforcement officials do not determine whether a violation of this Policy has occurred. Any questions regarding whether a specific incident violated the penal law should be addressed to law enforcement or the Nassau County District Attorney's Office.

#### *i. Order of Protection*

An individual also has the right to request the assistance of the University in obtaining an order of protection from the court. If an order of protection is granted, the Parties will have the right to receive a copy of the order of protection when the order is received by the University. The Parties will also have the opportunity to meet or speak with an appropriate University employee who can explain the order and the consequences for violating the order, and answer any questions about the order. Additionally, if the order of protection is violated, the individual may receive assistance from the University in calling local law enforcement to inform them of the violation.

### *B. Effect of Criminal Proceedings*

Sexual misconduct may constitute a violation of both state law and University policy. The University's definition of sexual misconduct, its process, and its standard of proof for a finding of responsibility for sexual misconduct differ from the standards for finding a violation of criminal law. Therefore, criminal investigations or reports are not determinative of whether sexual misconduct under this Policy has occurred. In other words, conduct may constitute sexual misconduct under this Policy even if law enforcement agencies lack sufficient evidence of a crime and decline to prosecute. Additionally, a law enforcement determination of whether or not to prosecute a Respondent is not determinative of whether the University will conduct an investigation under Title IX.

The filing of a complaint or formal complaint of sexual misconduct under this Policy is independent of any criminal investigation or proceeding. Proceedings under this Policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus.



The University will not wait for the conclusion of any criminal investigation or proceedings to commence its own investigation or to take any necessary interim measures to protect the Complainant and the University community. However, the University may temporarily delay its investigation to enable law enforcement to gather evidence and to engage in a preliminary investigation of sexual misconduct matters that may also violate the state criminal code. This delay should not last longer than 10 days unless law enforcement specifically requests and justifies a longer delay.

### *C. Civil Proceedings*

A Complainant and/or reporting individual has the right to receive assistance from appropriate University representatives in initiating legal proceedings in family court or civil court.

### *D. External Enforcement Agencies*

An individual who has experienced harassment may file a report, complaint, and/or formal complaint with the University, a complaint with an external enforcement agency, or both. Filing a report, complaint, and/or formal complaint internally with the University does not extend the time to file with an external enforcement agency or in court. One does not need an attorney and there is no cost to file a complaint with an external enforcement agency.

#### *i. U.S. and New York State Departments of Education*

U.S. Department of Education  
Civil Rights

400 Maryland Avenue, SW  
Washington, D.C. 20202-1100

Telephone: 1-800-421-3481

Fax: 202-453-6012; TDD: 1-800-877-8339

Email: [OCR@ed.gov](mailto:OCR@ed.gov)

Office for Civil Rights, New York Office  
U. S. Department of Education

32 Old Slip, 26th Floor

New York, NY 10005-2500

Telephone: (646) 428-3800

Facsimile: (646) 428-3843

Email: [OCR.NewYork@ed.gov](mailto:OCR.NewYork@ed.gov)

<https://www2.ed.gov/about/offices/list/ocr/index.html>

New York State Education Department Office of Higher Education

89 Washington Avenue

Albany, NY 12234

(518) 486-3633

[www.nysed.gov](http://www.nysed.gov)

#### *ii. U.S. Equal Employment Opportunity Commission (EEOC)*

The EEOC enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An individual can file a complaint with the EEOC anytime within 300 days<sup>8</sup> from the harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint, and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to

<sup>8</sup>These are calendar days, not business days.

Sue letter permitting the individual to file a complaint in federal court. The EEOC does not hold hearings or award relief, but may take other action including pursuing cases in federal court on behalf of complaining Parties. Federal courts may award remedies if discrimination is found to have occurred. In general, private employers must have at least 15 employees to come within the jurisdiction of the EEOC.

An employee alleging discrimination at work can file a “Charge of Discrimination.” The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (TTY: 1-800-669-6820), visiting their website at [www.eeoc.gov](http://www.eeoc.gov) or via email at [info@eeoc.gov](mailto:info@eeoc.gov). If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

### *iii. New York State Division of Human Rights*

The Human Rights Law (“HRL”), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to all employers in New York State with regard to sexual harassment, and protects employees, paid or unpaid interns and non-employees regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed either with the Division of Human Rights (“DHR”) or in New York State Supreme Court.

Complaints with DHR may be filed any time within three years of the harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, within three years of the alleged sexual harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court. Complaining internally to the University does not extend your time to file with DHR or in court. The three years is counted from date of the most recent incident of harassment. You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate your complaint and determine whether there is probable cause to believe that sexual harassment has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If sexual harassment is found after a hearing, DHR has the power to award relief, which varies but may include requiring your employer to take action to stop the harassment, or redress the damage caused, including paying monetary damages, attorney’s fees and civil fines. Adoption of this policy does not constitute a conclusive defense to charges of unlawful sexual harassment. Each claim of sexual harassment will be determined in accordance with existing legal standards, with due consideration of the particular facts and circumstances of the claim, including but not limited to the existence of an effective anti- harassment policy and procedure.

DHR’s main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458, (718) 741-8400, [www.dhr.ny.gov](http://www.dhr.ny.gov) Contact DHR at (888) 392-3644 or visit [dhr.ny.gov/complaint](http://dhr.ny.gov/complaint) for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR’s regional offices across New York State.

*iv. Local Protections and the Local Police Department*

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists. If the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the local police department.

## **12. University Notification**

Reports of sexual harassment may be made verbally or in writing.

An individual who feels that he or she has been the victim of sexual misconduct may go directly to the Title IX Coordinator or Deputy Title IX Coordinators to make a report of an incident. Individuals have the right to make a report of sexual misconduct, including sexual assault, domestic violence, dating violence, and/or stalking, to the Title IX Coordinator, University security, local law enforcement and/or state police and also have the right to choose not to report. The University will take all steps available to protect the individual from retaliation for reporting an incident and will provide assistance and resources to support the individual. At the first instance of disclosure by a reporting individual to a University representative, the reporting individual shall be reminded of these rights.

An individual making a report will have emergency access to a Title IX Coordinator or other appropriate official trained in interviewing victims of sexual assault. These personnel shall be available upon the first instance of disclosure to provide information regarding options to proceed, and, where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible. This individual will also detail that the criminal justice process utilizes different standards of proof and evidence and that any questions about whether a specific incident violated the penal law should be addressed to law enforcement or to the district attorney. This individual will also explain whether he or she is authorized to offer the reporting individual confidentiality or privacy, and will inform the reporting individual of other reporting options.

Anyone (whether or not they are the person alleged to be the victim of conduct that could constitute sexual misconduct) may report sexual misconduct, including sexual discrimination and sexual harassment, to the Title IX Coordinator at any time (even during non-business hours) in person, by mail, by telephone, or by electronic mail, using the contact information listed in Section IV. Anonymous complaints can be made online at <https://secure.ethicspoint.com/domain/media/en/gui/49117/index.html>.

The University will keep confidential the identity of sexual misconduct reporters, Complainants, individuals who have been reported to be perpetrators of sexual misconduct, including Respondents, and witnesses, except as permitted by FERPA; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

When the University receives a report from an individual that he or she has been the victim of sexual misconduct, whether the offense occurred on or off campus, the Title IX Coordinator will promptly

contact the Complainant to discuss the availability of supportive measures, discussed below in Section XIII, consider the Complainant's wishes with respect to supportive measures, inform the Complainant of the availability of supportive measures with or without the filing of a complaint or formal complaint, and explain the process for filing a complaint or formal complaint. The Complainant will have an intake meeting with the Title IX Coordinator to discuss these and other topics, such as a Complainant's rights and the University's various processes under this Policy. The complaint should be as specific as possible during the intake meeting and should clearly describe the alleged incident(s), when and where they occurred, and the desired remedy sought. The Title IX Coordinator, or his or her designee, will provide the Complainant with a general understanding of the University's Policy, and identify forms of support or immediate assistance available to the Complainant.

The University will provide the Reporting Individual with a written explanation of his or her rights under various laws, including the Clery Act, and options. The University will provide the Reporting Individual with written notification regarding existing counseling, health, mental health, victim advocacy, legal assistance, student financial aid and other services available for victims both within the University and in the community. If the Reporting Individual is not the Complainant, and the identity of the Complainant is made known to the University, the University will provide such written notification to the Complainant.

If the report is made by someone other than the Complainant, the Title IX Coordinator will reach out to the Complainant and Respondent and offer supportive measures. A reporting individual has the right to disclose, if the accused is an employee of the University, the incident to the University's human resources authority or the right to request that a confidential or private employee assist in reporting to the appropriate human resources authority.

Reports shall be investigated in accordance with this Policy. A report alone will not initiate either formal grievance process (Process A or Process B). A Complainant who wishes to pursue formal action by the University must file either a complaint or formal complaint, depending on which grievance process is appropriate. A Reporting Individual has the right to withdraw a report or involvement from the University process at any time.

#### *A. Timeframe for making a complaint*

There is no time limit for reporting sexual misconduct to the University under this Policy; however, the passage of time may make it difficult or even impossible to conduct a thorough and reliable investigation of the incident. Therefore, members of the Molloy community are encouraged to make a report as soon as possible after the incident has occurred.

Regardless of any delay in reporting,<sup>9</sup> upon receiving a report of sexual misconduct, the Title IX Coordinator will discuss supportive measures and the process for pursuing formal University action with the Complainant; the Complainant's wishes regarding pursuing a formal grievance process will control unless the Complainant does not wish to take formal action and refraining from doing so would not adequately mitigate a potential risk of harm to the reporting individual

<sup>9</sup> As noted above, should the conduct constituting sexual harassment have occurred prior to the effective date of this Policy (August 14, 2020), the Sexual Misconduct Policy in effect at the time the conduct occurred will govern the resolution of that report, complaint, or formal complaint.

or other members of the community and/or, in the case of Title IX sexual harassment, would be clearly unreasonable.

Under no circumstances will the University allow an impending graduation to compromise its resolution of a sexual misconduct complaint.

#### *B. University Amnesty Policy*

The health and safety of every student at the University is of utmost importance. The University recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The University strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to institution officials. A bystander acting in good faith or a Reporting Individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to University officials or law enforcement will not be subject to the University's code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking or sexual assault.

#### *C. Anonymous Reporting*

If the University receives a report of alleged sexual misconduct by someone other than the Complainant (e.g., friend or roommate) or from an anonymous source, the University's Title IX Coordinator will promptly notify the Complainant of the report, and inform him/her of the availability of supportive measures and assistance. The Title IX Coordinator will also reach out to the Respondent and offer supportive measures. In cases in which a report is made anonymously, this Policy will apply in the same manner as if the Complainant had made the initial report.

A known Complainant cannot remain anonymous during Process A regardless of who, the Complainant or the Title IX Coordinator, files the formal complaint. If a report is filed anonymously and the Complainant is not identified, the Title IX Coordinator may still proceed with filing a complaint or formal complaint, should circumstances warrant. However, the University's ability to respond to the complaint or formal complaint may be limited.

#### *D. Reports Involving Minors*

The University is also committed to the prevention of child abuse. Child abuse includes both the physical and sexual abuse of minors under the age of eighteen. All University employees are directed to bring all reasonable suspicions, beliefs, and allegations of child abuse immediately to the attention of the Title IX Coordinator, who will then make the appropriate report to the New York State Child Abuse Hotline (State Central Register). Reports can be made directly to the Child Abuse Hotline at (800) 342-3720. Additional information about reporting is available at <http://ocfs.ny.gov/main/cps/>.

### **13. Supportive Measures and Emergency Removal**

Supportive measures are available regardless of whether a Complainant pursues a complaint or formal complaint under this Policy. When the University receives a report of alleged sexual misconduct, the Title IX Coordinator will promptly contact the Complainant to discuss and offer supportive measures. The Title IX Coordinator will consider the Complainant's wishes when determining which supportive measures to implement.

#### *A. Supportive Measures*

Supportive measures are non-disciplinary, non-punitive individualized services offered, free of charge, by the University to the Complainant or the Respondent as appropriate and reasonably available. Participating in a formal grievance process, including an investigation, and/or reporting the incident to University Security or local law enforcement is not required in order to obtain supportive measures. Supportive measures may be offered before or after the filing of a complaint or formal complaint or when a report is made but no complaint or formal complaint is ever filed. They are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other Party and include measures designed to protect the safety of all Parties or the University's educational environment or deter sexual misconduct.

Supportive measures range from services such as counseling or medical services to withdrawals or leaves of absence. Supportive measures may include, but are not limited to:

- Establishing restrictions on contact (no-contact orders) between the Parties;
- Providing counseling or academic support services;
- Modifications to work or class schedules;
- Changes in academic, extracurricular, housing, dining, employment, transportation, or other applicable arrangements;
- Altering arrangements to working, housing, living, transportation, or other applicable situations including changes in residence hall assignments or office locations;
- Providing course-related adjustments such as extensions of deadlines;
- Providing leaves of absence;
- Providing campus escort services;
- Providing increased security and monitoring of certain areas of the campus; and/or
- Other similar measures as determined by the Title IX Coordinator.

Requests for supportive measures should be made to the University's Title IX Coordinator. The University will grant such requests, provided they are reasonable, available, and not punitive or unduly burdensome for the other Party, regardless of whether the Complainant chooses to report the crime to law enforcement or to pursue a formal grievance process internally. The University will provide information about supportive measure only to those having a need to know such information in order to implement the supportive measures; otherwise, any supportive measures provided to the Complainant or Respondent are confidential.

The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. The Respondent and/or the Complainant will, upon request, be afforded a prompt review,



reasonable under the circumstances, of the need for and terms of any supportive measure that affects them, including potential modification. The Respondent and/or Complainant will be allowed to submit evidence in support of his or her request. Upon receipt of such a request, Title IX Coordinator will inform the other Party of the request and allow the other Party to respond in writing and to submit evidence relevant to the request if desired. Violation(s) of the Title IX Coordinator's directives and/or protective actions will constitute related offenses that may lead to additional disciplinary action.

### *B. No Contact Order*

The University may impose a No Contact Order, which typically will include a directive that the Parties refrain from having contact with one another, directly or through proxies, whether in person or via electronic means, pending the investigation and, if applicable, the hearing. All no-contact orders will be mutual – i.e. neither Party involved will be permitted to contact the other Party -- unless the University determines, in its discretion and after a fact-specific analysis, that a non-mutual order is appropriate. The Title IX Coordinator will issue any no-contact order in writing, specifying the terms of the no-contact order, including the Parties' responsibilities.

The Parties may request a review of the need for and terms of the No Contact Order, including potential modification, and may submit evidence in support of the request. This request should be made in writing to the Title IX Coordinator. Upon receipt of such a request, Title IX Coordinator will inform the other Party of the request and allow the other Party to respond in writing and to submit evidence relevant to the request if desired. The University will conduct a prompt review, reasonable under the circumstances, in response to such request. An individual who wishes to report a violation of a No-Contact Order can contact the Title IX Coordinator. Individuals who violate a no-contact order issued pursuant to this Policy may be subject to discipline. Sanctions may include, but are not limited to, expulsion or termination from the University.

### *C. Emergency Removal*

A Respondent may be removed from the University's education program or activity on an emergency basis, if, after an individualized safety and risk analysis, the Title IX Coordination, in consultation with other University officials, including members of Public Safety, as necessary, determines that there is an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual misconduct that justifies removal.

The Respondent will be provided with notice and an opportunity to challenge the decision immediately following the removal. A student respondent who wishes to challenge the emergency removal decision may do so by submitting a written request via email to Janine Biscari, Vice President for Student Affairs & Dean of Students, at [JBiscari@molloy.edu](mailto:JBiscari@molloy.edu), who will then conduct a review of the emergency removal decision and issue a decision on the challenge. An employee respondent who wishes to challenge the removal decision may do so by submitting a written request via email to Susan Williams at [swilliams@molloy.edu](mailto:swilliams@molloy.edu) who will then conduct a review of the emergency removal decision and issue a decision on the challenge.

Additionally, both Parties, upon request, will be afforded a prompt review, reasonable under the circumstances, of the need for and terms of the emergency removal, including potential modification, and shall be allowed to submit evidence in support of such request.

In matters involving a student respondent, requests for such a review should be submitted via email to the Vice President for Student Affairs & Dean of Students, Janine Biscari, who will then conduct the review. In matters involving an employee respondent, requests for such a review should be submitted to the Vice President for Finance and Treasurer, Susan Williams, who will then conduct the review.

Individuals who fail to comply with an emergency removal order or any other interim measures may be subject to discipline. Sanctions may include, but are not limited to, expulsion or termination from the University. The University may also place a non-student employee Respondent on administrative leave at its discretion and/or in accordance with federal and state laws.

## **14. Presumptions, Standards, and Consolidation**

### *A. Presumption and Expectations*

There is a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of this grievance process.

The University expects all members of the University community to cooperate with the University during the various formal and informal processes outlined in the Policy. This includes responding in a timely manner to requests from the Title IX Coordinator or Investigator and making reasonable adjustments to schedules to participate in meetings, hearings, or other proceedings. Parties whose participation is invited or expected at a hearing, investigative interview, or other meeting will be provided written notice of the date, time, location, participants, and purpose of said event prior to the event.

Further, individuals are expected to provide information in good faith; knowingly providing false information or making false allegations is strictly prohibited and is subject to discipline.

### *B. Standard of Evidence*

The standard for decisions under this Policy is a preponderance of the evidence, meaning that it is more likely than not that a violation of this Policy occurred. The burden of proof as well as the burden to gather evidence sufficient to reach a determination regarding responsibility rests on Molloy and not the Parties.

### *C. Consolidation of Complaint*

If two or more complaints or formal complaints are reported pertaining to the same or related sets of facts and circumstances, the Title IX Coordinator may determine that the cases should be consolidated and investigated and adjudicated by the same Investigator(s), Hearing Officer or Hearing Panel, and Appeals Panel, subject to the limits of applicable law including but not limited to FERPA. The University may do this as to allegations of Title IX sexual harassment or any other type of sexual misconduct or retaliation claim against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against another Party, where the allegations of sexual harassment, sexual misconduct, or retaliation arise out of the same facts or circumstances.



#### *D. Amendments and Designation*

The most current revision of this Policy supersedes all previously issued revisions and inconsistent verbal or written policy statements. The University reserves the right at any time to change, delete, or add to any of the provisions of this Policy. The University may, at its discretion, designate a trained and experienced individual(s) to act in the place of the Title IX Coordinator, Investigator, Hearing Officer, Hearing Panel members, Appeals Panel members, and/or facilitator(s) in this Policy. If there is such a designation, the Parties involved will be promptly informed.

#### *E. Conflicts of Interest, Bias and Training*

The Title IX Coordinator, Investigators, Hearing Officer, Hearing Panel members, and Appeals Panel members, as well as any person who facilitates an informal process, are trained to serve impartially and must be free from conflicts of interest and bias against Complainants or Respondents generally or an individual Complainant or Respondent. These individuals also receive training in accordance with federal, state, and local law, including topics set forth in the Clery Act, Article 129-B (N.Y. Educ. Law § 6444(5)(c)(ii)) and Title IX (34 C.F.R. § 106.45 (b)(1)(iii)).

### **15. Initiating a Formal Grievance Process**

A Complainant who wishes to pursue formal action by Molloy must file either a complaint or formal complaint, depending on which grievance process is appropriate. The Title IX Coordinator may also sign and file a complaint or formal complaint, even against the Complainant's wishes, if they conclude after the requisite analysis that they are required to do so. This is discussed further below.

#### *A. Complaints and Formal Complaints*

A formal grievance process is initiated by the filing of either a complaint (Process B) or a formal complaint (Process A). The filing procedure for both Process A and Process B is the same; the only difference is the name of the formal document that is filed to initiate proceedings. The Title IX Coordinator can aid the Complainant in filing the document. A report, complaint, and formal complaint form for employees and covered non-employees is located in Appendix A. A report, complaint, and formal complaint form for students is located in Appendix B.

A complaint or formal complaint may be filed with the Title IX Coordinator at any time (even during non-business hours) in person, by mail, or by electronic mail, by using the contact information in Section IV. Once a complaint or formal complaint is received by the University, it will be reviewed by the Title IX Coordinator. If a complaint or formal complaint is submitted that does not contain the requisite information and/or signature, the Title IX Coordinator will reach out to the Complainant to explain the deficiencies and instruct the Complainant regarding the process and information needed to properly file a complaint or formal complaint.

Once the relevant document has been filed, the University will begin the formal grievance process. Process A, discussed in section XVII below, applies only to allegations of Title IX sexual harassment and is initiated by the filing of a formal complaint. Process B, discussed in section XVIII below, applies to all other allegations of sexual misconduct and/or retaliation and is initiated by the filing of a

complaint. The Title IX Coordinator will meet with the Respondent within five (5) days of the relevant formal document being filed.

*i. Requests for Confidentiality*

The University endeavors to respect and follow the wishes of an individual who brings forward a sexual misconduct complaint regarding pursuing a formal grievance process. Prior to conducting an investigation, the Title IX Coordinator will ask the Complainant's wishes regarding initiating a formal grievance process against the Respondent. If the Complainant consents, the process above will be followed. If the Complainant does not wish to pursue a formal grievance process, including an investigation, the Complainant may request that no formal action is taken and that the report remains confidential. However, Complainants should understand that Molloy may have an obligation to investigate or adjudicate incidents of sexual misconduct that come to its attention. Therefore, depending on the circumstances, it may not be possible to honor a request for confidentiality while still providing a safe, non-discriminatory environment for all members of the Molloy community. The Title IX Coordinator is designated to evaluate requests for confidentiality.

The Complainant's wishes will be honored unless the Title IX Coordinator determines in good faith that: (1) failure to investigate the allegations would not adequately mitigate a potential risk of harm to the reporting individual or the community; or (2) for Title IX sexual harassment only, not filing a formal complaint would be clearly unreasonable in light of the known circumstances.

When determining whether the Complainant's request for confidentiality can be honored, the Title IX Coordinator will consider a range of factors, including, but not limited to, the following:

- Whether there have been other sexual misconduct complaints about the same Respondent;
- Whether there is an increased risk that the Respondent will commit additional acts of violence;
- Whether the Respondent has a history of arrests or records from a prior school indicating a history of violence;
- Whether the University has other means to obtain relevant evidence (e.g., security cameras or personal, physical evidence).
- Whether the incident represents an escalation in unlawful conduct on behalf of the Respondent from previously noted behavior;
- Whether the sexual misconduct was committed by multiple Respondents;
- Whether the Complainant's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group;
- Whether the alleged sexual misconduct was perpetrated with a weapon or force; and
- The age of the Complainant.

If, after considering these factors, the University determines that an investigation is required, the Title IX Coordinator will sign a complaint or formal complaint and the University will inform the Complainant and/or reporting individual and take immediate action necessary to protect and assist the Complainant and/or reporting individual. The University will take all reasonable steps to investigate and respond to the complaint while maintaining the Complainant's privacy to the greatest extent possible. For all reports of sexual misconduct, the University will consider broader remedial action, such as increased monitoring, supervision of security at locations where the reported sexual misconduct occurred, increasing training, education and prevention efforts, and climate surveys.

A Complainant is entitled to supportive measures regardless of whether a formal grievance process, including an investigation, is pursued; however, no disciplinary sanctions or other actions that are not supportive measures may be imposed on a Respondent prior to a finding of responsibility.

A Complainant who initially declined to pursue a formal grievance process may later initiate a formal grievance process by filing a complaint or formal complaint. Likewise, a Complainant who began a formal grievance process is under no obligation to continue with that process and may withdraw the complaint or formal complaint at any time.

#### *B. Notice of Allegations*

If either the Complainant or the Title IX Coordinator elects to pursue formal action in response to a report and files a complaint or a formal complaint, written notice of the following information will be sent to Parties who are known when such complaint or formal complaint is received by the University:

- A copy of this Policy, including the Process A and Process B grievance process and any informal resolution process.
- The specific provision(s) of this Policy or laws alleged to have been violated.
- The allegations of conduct potentially constituting sexual misconduct, including Title IX sexual harassment, containing sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the Parties involved in the incident, if known, the conduct allegedly constituting the sexual misconduct, and the date, time, and location of the alleged incident, if known.
- The sanction or sanctions that may be imposed on the Respondent.
- The Respondent is presumed not responsible for the alleged conduct and a determination regarding responsibility is made at the conclusion of the grievance process.
- The Parties may have an Advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence.
- Any provision in the University's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the formal grievance process.
- The University's Prohibition against retaliation.

If, during the investigation, the University decides to investigate allegations about the Complainant or Respondent that are not included in the original notice described above, the University will provide notice of the additional allegations to the Parties whose identities are known.

### *C. Timeframe*

Unless there is good cause for temporary delay(s) or limited extension(s), the University will promptly conclude aspects of the disciplinary process within the following timeframes:

1. The formal grievance process, including the investigation, hearing, and finding of responsibility but excluding time spent on informal processes or appeal, will be concluded within 90 business days of the complaint or formal complaint being filed.
2. Appeals will be concluded within 30 business days of the filing of an appeal.
3. Informal resolutions will be concluded within 30 business days of receiving both Parties' voluntary, written consent to the informal resolution process.

Good cause may include, but is not limited to, absence or unavailability of a Party, Advisor, or witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. In the case of a temporary delay of the grievance process or a limited extension of time frames for good cause, Molloy will provide the Complainant and Respondent with written notice of such delay or extension and the reasons for the action.

### *D. Advisors*

Each Party has the right to choose and consult with an advisor who can be, but is not required to be, an attorney. While Parties are not restricted from discussing the allegations and may consult with multiple individuals, only one (1) individual may be designated an advisor for the purpose of this Policy. This advisor must sign an advisor acknowledgement form, acknowledging the University's rules. The choice of whether or not to invite an advisor is solely that of the Complainant and Respondent, though both Parties may be accompanied by their respective advisors at any meeting or proceeding related to the investigation and resolution of a complaint or formal complaint under this Policy. Advisors may consult with the party, as reasonable and in private, during the meeting or proceeding. At the Complainant's request or at the Respondent's request, the Title IX Coordinator can appoint the requesting Party an advisor who has been formally trained. Advisors cannot actively participate or speak on behalf of the Complainant or Respondent, with the exception of cross-examination in a Process A hearing, as discussed in further detail below. If any advisor's conduct is not consistent with these guidelines, he or she may be excluded from the conduct process.

In a Process A hearing, advisors are permitted to cross examine the other Parties and witnesses during the live hearing; Parties are not permitted to personally conduct cross-examinations. If a Party does not have an advisor for a Process A hearing, the University will appoint one (who can be, but is not required to be, an attorney) free of charge to conduct cross-examinations on behalf of that Party.

The Title IX Coordinator must be advised in writing that an advisor will be present at least 24 hours before any scheduled meeting, hearing, or proceeding. This notification must include: (1) the full name and title of the advisor of choice; and (2) contact information for the advisor of choice (phone, email, and address).

## 16. Informal Resolution

In certain cases, a Complainant who wishes to file a complaint or formal complaint but who does not wish to pursue a full formal grievance process may request a less formal proceeding, known as “Informal Resolution.” While the informal resolution process is not as structured as the formal grievance process, it can be an effective and appropriate means to deal with the complaint or formal complaint. Informal resolution is only available once a complaint or formal complaint has been filed; a report alone is insufficient. Formal complaints alleging Title IX sexual harassment of a student by an employee *must* be resolved through a formal grievance process and are not eligible for informal resolution.

Molloy does not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of complaints of sexual misconduct or formal complaints of Title IX sexual harassment. Parties are not required to participate in an informal resolution process.

If a complaint or formal complaint is eligible for informal resolution, an informal resolution may begin at any time prior to a determination regarding responsibility being reached if Molloy:

1. Provides to the Parties a written notice disclosing:
  - a. the allegations;
  - b. the requirements of the informal resolution process including the circumstances under which it precludes the Parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any Party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the complaint or formal complaint; and
  - c. any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared; and
2. Obtains the Parties’ voluntary, written consent to the informal resolution process.

At any point prior to a determination of responsibility being made, either Party may communicate to the Title IX Coordinator that they wish to pursue an informal resolution. At that point, the Title IX Coordinator will reach out to the other Party or Parties to see if they are interested in an informal resolution. If both Parties agree, the Title IX Coordinator will follow the notice and written consent provisions outlined above before proceeding any further.

A trained counselor, trained mediator, or, if appropriate, a University employee will preside over the informal resolution and may be assisted by another member of the senior staff of the University or outside expert. No person designated by the University to facilitate an informal resolution process will have a conflict of interest or bias. An informal resolution may encompass a broad range of conflict resolution strategies, including, but not limited to, arbitration, mediation, or restorative justice. The Title IX Coordinator will be responsible for determining whether the informal process is appropriate by assessing the totality of the circumstances including, but not limited to, the severity of the alleged sexual misconduct, the Parties’ wishes, and the potential risks to the campus community. The Complainant and

the Respondent each may bring an advisor to the informal resolution. Advisors are subject to the restrictions set forth in Section XV(D).

If, in the course of the informal resolution, the Respondent admits to violating the Policy, that admission will serve as a finding of responsibility. The facilitator will recommend one or more sanctions, which the Respondent can accept or reject. The sanctions that may be imposed as the result of the informal resolution process are the same as those outlined in Section XIX. If the recommended sanction(s) is accepted, the process is concluded. There is no appeal option after the Parties reach a resolution through informal means. If it is rejected, the formal grievance process will resume.

Participation in the informal resolution process is voluntary. The University does not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of complaints of sexual misconduct or formal complaints of Title IX sexual harassment. The University will not compel a Complainant or a Respondent to engage in informal resolution and will allow a Complainant or Respondent to withdraw from the informal resolution process at any time. The University may, at any time, elect to end such proceedings and resume the formal grievance process instead. Pursuing informal resolution does not preclude later use of a formal grievance process if the informal resolution fails to achieve a resolution acceptable to the Parties and the University. Statements or disclosures made by the Parties in the course of the informal resolution may be considered in the formal grievance process.

## **17. Process A: Formal Grievance Process for Allegations of Title IX Sexual Harassment**

Process A applies only to allegations of Title IX sexual harassment, as defined herein, of which Molloy has actual knowledge, and which occur during Molloy's education programs or activities against a person in the United States. Process A must be applied when a formal grievance process is initiated for qualifying allegations. All other violations of this Policy will be resolved under Process B.

Under Title IX, The University's response to reports or formal complaints of sexual harassment must treat Complainants and Respondents equitably by offering supportive measures to a Complainant, and by following a grievance process that complies with Title IX before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a Respondent.

### *A. Formal Complaints*

A formal complaint, as defined herein, may be filed with the Title IX Coordinator at any time (even during non-business hours) in person, by mail, or by electronic mail, by using the contact information in Section IV. The Title IX Coordinator may also sign a formal complaint if the Complainant does not wish to pursue a formal grievance process but the results of the requisite analysis obligate the Title IX Coordinator to do so; however, where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a Complainant or otherwise a Party to the formal complaint. The University will promptly investigate formal complaints and follow a grievance process that complies with 34 C.F.R. § 106.45 before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in 34 C.F.R. § 106.30, against a Respondent. The Complainant must be participating in or attempting to participate in the University's education program or activity at the time the formal complaint is filed. The Complainant has the right to withdraw a formal complaint or their involvement

in the University's investigation or grievance process at any time. A report, complaint, and formal complaint form for employees and covered non-employees is located in Appendix A. A report, complaint, and formal complaint form for students is located in Appendix B.

### *B. Dismissal of a Formal Complaint*

There are certain circumstances where a formal complaint must or may be dismissed from the Process A grievance process. Dismissal of a formal complaint from the Process A grievance process does not preclude action under Process B or another Molloy policy.

A dismissal of a formal complaint from the Process A grievance process is mandatory when the conduct alleged in the formal complaint:

1. Would not constitute Title IX sexual harassment, even if proved;
2. Did not occur in Molloy's education program or activity;
3. Did not occur against a person in the United States; or
4. The Complainant is not participating in or attempting to participate in Molloy's education program or activity at the time of filing a formal complaint.

Molloy is permitted, but not required, to dismiss a formal complaint from the Process A grievance process if at any time during the investigation or hearing:

1. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein;
2. The Respondent is no longer enrolled at or employed by Molloy; or
3. Specific circumstances prevent Molloy from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

If a formal complaint and/or any allegations therein are dismissed, the Title IX Coordinator will promptly and simultaneously send written notice of the dismissal and the reason(s) therefore to the Parties. A dismissal may be appealed using the procedure discussed in section XX. The Parties are still entitled to supportive measures, even if the formal complaint is dismissed.

### *C. Informal Resolution*

Please see section XVI for information on pursuing an informal resolution.

### *D. Investigation*

Molloy must investigate the allegations in a formal complaint. The investigation will be conducted in an impartial, prompt, thorough, fair, timely, and respectful manner. Notice of the commencement of an investigation will be provided in accordance with section XV(B) of this Policy.



The Title IX Coordinator will either appoint an appropriately trained investigator(s) to conduct the investigation (the “Investigator”) or the Title IX Coordinator will conduct the investigation and serve as the Investigator. A Party wishing to challenge the selection of the Investigator must notify the Title IX Coordinator, in writing, within 2 business days of receipt of the name and contact information of the Investigator, stating the specific reason(s) for the Party’s objection. The Title IX Coordinator will determine whether the challenge has merit, and reserves discretion to make changes to the individual(s) assigned as the Investigator(s). If the Title IX Coordinator is the Investigator, objections should be submitted to, and will be determined by, Dr. Susan Williams, Vice President for Finance and Treasurer. No investigator will have a conflict of interest or bias.

During the investigation, Molloy has the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility. Molloy cannot access, consider, disclose, or otherwise use in the formal grievance process a Party’s records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional’s or paraprofessional’s capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party, unless Molloy obtains voluntary, written consent from that Party (or, if the Party is not an eligible student, that Party’s parent) to do so. Questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege are not permitted in the grievance process unless the person holding such privilege has waived that privilege.

The Investigator will gather evidence relating to the alleged violation of this Policy. The investigation will include individual interviews with the Parties involved and with individuals who may have observed the alleged conduct or may have other relevant knowledge. The Investigator will also collect any other available evidence, such as relevant documents or surveillance video. The Complainant and Respondent will be given an equal opportunity to provide evidence to the Investigator, present information in the context of the investigation, recommend fact and expert witnesses, and present other inculpatory or exculpatory evidence.

Neither Party is restricted from discussing the allegations or gathering and presenting evidence. If relevant evidence is destroyed by a Party, the Hearing Officer can take that into account in assessing the credibility of the Parties, and the weight of evidence in the case. Both Parties will have an equal opportunity to inspect and review any evidence as part of the investigation that is directly related to the allegations in the formal complaint, including the evidence upon which Molloy does not intend to rely on reaching a determination regarding responsibility, and inculpatory or exculpatory evidence whether obtained from a Party or other source. Both Parties have the right to review and present available evidence in the case file, or otherwise in the possession or control of the institution, and relevant to the case.

At the conclusion of the investigation, the Investigator will prepare a case file, which will include all collected evidence that is directly related to the allegations raised in the formal complaint, including the evidence upon which the University does not intend to rely in reaching a determination of responsibility and any inculpatory or exculpatory evidence, whether obtained from a Party or other source as part of the investigation. After gathering the relevant evidence, the Investigator will also issue an investigative report that fairly summarizes relevant evidence. Prior to completing the investigative report, each Party and their advisor, if any, will be sent the case file subject to inspection and review in an electronic format or a hard copy, and will have 10 business days to submit a written response.<sup>10</sup> The Investigator will consider these responses prior to completing the investigative report.



An electronic or hard copy of the investigative report must be sent to each Party and their advisor, if any, 10 business days prior to the hearing for their review and written response. Parties must submit their written responses at least 5 days before the hearing. The Parties and their advisors, if any, will be provided with the other Party's written response to the investigative report, if any, in electronic format or hard copy prior to the hearing.

### *E. Hearing*

A live hearing is required. The Hearing Officer will be chosen from a pool of designated and trained faculty and staff at Molloy and is charged with fairly, promptly, and impartially determining, based upon a preponderance of evidence, whether it is more likely than not that the Policy has been violated. Where circumstances warrant, the Title IX Coordinator or designee may determine that an individual external to Molloy will be assigned as the Hearing Officer. The Hearing Officer will not have a conflict of interest or bias. Neither the Title IX Coordinator nor the Investigator are permitted to serve as the Hearing Officer.

The Title IX Coordinator will provide all documentation related to the complaint, including but not limited to the investigative report, to the Hearing Officer. The Parties are free to reference the investigative report and any evidence during the hearing. Both Parties also have the right to present available evidence in the case file, or otherwise in the possession or control of the institution, and relevant to the case.

The Title IX Coordinator will provide written notice at least five (5) business days before the hearing date to the Parties. The written notice will include, at a minimum:

- The date, time, and place of the hearing;
- The participants in the hearing (including but not limited to the Parties, witnesses, etc.).
- The purpose of the hearing.
- The name and contact information of the Hearing Officer. A Party wishing to challenge the participation of the Hearing Officer must notify the Title IX Coordinator, in writing, within three (3) business days of receipt of the notice of hearing, stating the specific reason(s) for the Party's objection. The Title IX Coordinator will determine whether the challenge has merit, and reserves discretion to make changes to the assigned Hearing Officer at any time.

The hearing will take place on the date and time specified in the notice of hearing. If circumstances arise that require a change in the hearing date or time, the Title IX Coordinator will provide both Parties with written notice explaining the reason for such change. The University will arrange for an audio recording of the hearing and may arrange for the preparation of any transcript of the recording that the University deems appropriate.

<sup>10</sup> Whether included as relevant in the investigative report or not, the University will make all directly related evidence subject to the Parties' inspection and review available at any hearing to give each Party an equal opportunity to refer to the evidence during the hearing, including for purposes of cross-examination.

The live hearing may be in person, virtual, or a combination of both, as long as participants can simultaneously see and hear each other. Either Party may request that the live hearing occur with Parties located in separate rooms, in which case Molloy will grant that request; the Parties will be in separate rooms with technology enabling the Hearing Officer and Parties to simultaneously see and hear the Party or the witness answering questions.

The Hearing Officer may consider all evidence that they determine is relevant. The Hearing Officer is responsible for maintaining an orderly, fair, and respectful hearing and will have broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding the offending individual, including a Party, witness, or advisor. During the hearing, Parties must speak on their own behalf to give testimony; however, an advisor must conduct cross-examinations. At the hearing, each Party's advisor is permitted to ask the other Party or Parties and any witnesses all relevant questions and follow up questions, including those challenging credibility, as part of cross-examination. Cross-examination must be conducted directly, orally, and in real time by the advisor; Parties are not permitted to personally conduct cross-examination. Thus, both the Complainant and Respondent must be accompanied by an advisor for at least this portion of the live hearing, though advisors are permitted to be present for the entire hearing. If a Party does not have an advisor present at the hearing, then an advisor will be appointed by Molloy, free of charge, for the purposes of conducting cross-examination.

Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Hearing Officer shall determine whether the question is relevant, state a finding for the record, and explain any decision to exclude a question as not relevant. The Hearing Officer may decline to allow any question that is duplicative of information already gathered or asked, irrelevant, or otherwise determined to be unnecessary or inappropriate. Any relevant evidence may be considered by the Hearing Officer in making their decision regarding a finding of responsibility. While Parties are expected to be present for the entirety of the hearing prior to deliberations, witnesses are permitted to attend only as is necessary to answer questions, including on cross-examination, and do not need to be present for the entire hearing.

Both Parties have the right to exclude their own mental health diagnosis and/or treatment from admittance in the hearing. As stated above, medical and psychological records are also excluded unless a Party voluntarily waives that privilege and consents to the records being used. Both Parties also have the right to exclude their own prior sexual history with persons other than the other Party in the judicial or conduct process, subject to the exceptions in 34 CFR § 106.45(6)(i), which states that questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant unless such questions and evidence about the Complainant's prior sexual behavior are (1) offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant or (2) if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

If a Party or witness does not submit to cross-examination at the live hearing, the Hearing Officer cannot rely on any statement of that Party or witness in reaching a determination regarding responsibility. The Hearing Officer cannot draw an inference regarding the determination of responsibility based solely on a Party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. An audio recording/transcript of any live hearing will be created and made available to the Parties for inspection and review.

In order to comply with the Family Educational Rights and Privacy Act (“FERPA”), and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, the hearing process is not open to the general public. Accordingly, the University will not disclose documents prepared in anticipation of the hearing, documents, testimony, or other information introduced at the hearing, and any transcript of the hearing itself may not be disclosed outside of the hearing proceedings, except as may be required or authorized by law and/or University policy.

#### *F. Impact Statements*

Within five (5) business days of the conclusion of the hearing, both the Complainant and the Respondent will be given access to the record of the hearing and offered an opportunity to provide an **impact statement** to the Hearing Officer while they are deliberating on appropriate sanctions. The record of the hearing may not be copied. The impact statement may be no longer than five

1. single-spaced typed pages, using size 12 Times New Roman font and 1-inch margins. The impact statement may not seek to introduce new evidence. This impact statement must be provided to the Title IX Coordinator. The Title IX Coordinator will provide the impact statements to the Hearing Officer only once the Hearing Officer is deliberating on appropriate sanctions. Impact Statements cannot and will not be considered by the Hearing Officer when reaching a determination of responsibility.

#### *G. Determination of Responsibility*

In all investigations into alleged sexual misconduct, the University will evaluate evidence under a “**preponderance of evidence**” standard. The Respondent will be found responsible for the alleged sexual misconduct if the Hearing Officer concludes, based upon careful and objective review of all information presented, that such sexual misconduct more than likely occurred. In reaching this decision, all relevant evidence must be objectively evaluated, and credibility determinations may not be based on a person’s status as a Complainant, Respondent, or witness. The Hearing Officer cannot defer to any conclusions in the investigative report and must make an independent determination of responsibility.

If the Hearing Officer concludes that the Respondent is responsible for a violation of this Policy, then the Hearing Officer shall receive the Respondent’s disciplinary record (i.e., any previous disciplinary action or other violation of Molloy Policy, including this Policy, for which the Respondent was found responsible), and the Party impact statements to consider, as appropriate, in determining sanctions.

If the Hearing Officer determines that the Respondent committed a violation of this Policy, they will determine the appropriate sanctions. The possible sanctions are described in Section XIX below. The Complainant and Respondent will be informed, simultaneously and in writing, of the Hearing Officer’s decision as described below.

The Hearing Officer must issue a written determination regarding responsibility within 5 business days of the conclusion of the hearing. The written determination must include:

1. Identification of the allegations potentially constituting Title IX sexual harassment
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the Parties, interviews with Parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding the application of Molloy's Policy to the facts;
5. As to each allegation, a statement of, and rationale for, the result, including the determination regarding responsibility, any disciplinary sanctions Molloy imposes on the Respondent, and whether remedies designed to restore or preserve equal access to Molloy's education program or activity will be provided by Molloy to the Complainant;
6. Molloy's procedures and permissible bases for the Complainant and Respondent to appeal; and
7. When the determination becomes final.

The written determination will be provided to both Parties simultaneously. Molloy must wait to act on the determination regarding responsibility, including implementing sanctions or remedies, until the determination becomes final. The determination regarding responsibility becomes final either on the date that Molloy provides the Parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. *For the appeal process, please see Section XX.* The Title IX Coordinator is responsible for effective implementation of any remedies. Both Parties have the right to choose whether to disclose or discuss the outcome of the formal grievance process.

## **18. Process B: Formal Grievance Process for Other Allegations of Sexual Misconduct**

Process B is a prompt and equitable resolution process that applies to all allegations of sexual misconduct and retaliation, as defined herein, that do not constitute Title IX sexual harassment and therefore do not qualify for Process A, including sex/gender-based discrimination or harassment that does not qualify as Title IX sexual harassment.

### *A. Complaints*

Process B is initiated by the filing of a complaint. Please see Section XV for information on filing a complaint with Molloy. A complaint may be filed with the Title IX Coordinator at any time (even during non-business hours) in person, by mail, or by electronic mail, by using the contact information in Section IV. A report, complaint, and formal complaint form for employees and covered non-employees is located in Appendix A.

A report, complaint, and formal complaint form for students is located in Appendix B.

A Complaint may also be filed online at <https://secure.ethicspoint.com/domain/media/en/gui/49117/index.html>. Once a complaint is received by the University, it will be reviewed by the Title IX Coordinator.

## *B. Dismissal of a Complaint*

The Title IX Coordinator or designee will conduct an initial review of the complaint and determine if it alleges a violation of this Policy. If the complaint does not describe a potential violation, the complaint will be dismissed.

Molloy may dismiss a complaint from the Process B grievance process if at any time during the investigation or hearing:

1. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein;
2. The Respondent is no longer enrolled at or employed by Molloy; or
3. Specific circumstances prevent Molloy from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

If a complaint and/or any allegations therein are dismissed, the Title IX Coordinator will promptly and simultaneously send written notice of the dismissal and the reason(s) therefore to the Parties. A dismissal of a Complaint may not be appealed. Dismissal from the Process B grievance process does not preclude action under another provision of Molloy's policies.

## *C. Informal Resolution*

Please see section XVI for information on pursuing an informal resolution.

## *D. Investigation*

The investigation of a complaint will be conducted in an impartial, prompt, thorough, fair, timely, and respectful manner.

Notice will be provided in accordance with section XV(B) of this Policy. The Title IX Coordinator will either appoint an appropriately trained investigator(s) to conduct the investigation (the "Investigator") or the Title IX Coordinator will conduct the investigation and serve as the Investigator. A Party wishing to challenge the selection of the Investigator must notify the Title IX Coordinator, in writing, within two business days of receipt of the name and contact information of the Investigator, stating the specific reason(s) for the Party's objection. The Title IX Coordinator will determine whether the challenge has merit, and reserves discretion to make changes to the individual(s) assigned as the Investigator(s). If the Title IX Coordinator is the Investigator, objections should be submitted to, and will be determined by, Dr. Susan Williams, Vice President for Finance and Treasurer. No investigator will have a conflict of interest or bias.

During the investigation, Molloy has the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility. Molloy cannot access, consider, disclose, or otherwise use in the formal grievance process a Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party, unless Molloy obtains voluntary, written consent from that Party (or, if the Party is not an eligible student, that Party's parent) to do so. Questions or evidence that constitute, or seek disclosure of, information protected under a legally

recognized privilege are not permitted in the grievance process unless the person holding such privilege has waived that privilege.

The Investigator will gather evidence relating to the alleged violation of this Policy. The investigation will include individual interviews with the Parties involved and with individuals who may have observed the alleged conduct or may have other relevant knowledge. The Investigator will also collect any other available evidence, such as relevant documents or surveillance video. The Complainant and Respondent will be given an equal opportunity to provide evidence to the Investigator, present information in the context of the investigation, recommend fact and expert witnesses, and present other inculpatory or exculpatory evidence.

Neither Party is restricted from discussing the allegations or gathering and presenting evidence. If relevant evidence is destroyed by a Party, the Hearing Panel can take that into account in assessing the credibility of the Parties, and the weight of evidence in the case. Both Parties will have an equal opportunity to inspect and review any evidence as part of the investigation that is directly related to the allegations in the formal complaint, including the evidence upon which Molloy does not intend to rely on reaching a determination regarding responsibility, and inculpatory or exculpatory evidence whether obtained from a Party or other source. Both Parties have the right to review and present available evidence in the case file, or otherwise in the possession or control of the institution, and relevant to the case.

At the conclusion of the investigation, the Investigator will prepare a case file, which will include all collected evidence, including evidence in the possession or control of the University, relevant to the case. After gathering the relevant evidence, the Investigator will issue an investigative report. The Complainant and Respondent will each have access to the case file and investigative report, in the presence of a University official.<sup>11</sup>

### *E. Hearing*

The Hearing Panel will be comprised of three (3) members chosen from a pool of designated and trained faculty, staff, and administrators at Molloy and is charged with fairly, promptly, and impartially determining, based upon a preponderance of evidence, whether it is more likely than not that the Policy has been violated. Where circumstances warrant, the Title IX Coordinator may determine that an individual external to Molloy will be assigned as a member of the Hearing Panel. The members of the Hearing Panel will not have a conflict of interest or bias. Neither the Title IX Coordinator nor the Investigator are permitted to serve as members of the Hearing Panel.

The Title IX Coordinator will provide all documentation related to the complaint, including but not limited to the investigative report, to the Hearing Panel. The Parties are free to reference the investigative report and any evidence during the hearing. Both Parties also have the right to present available evidence in the case file, or otherwise in the possession or control of the institution, and relevant to the case.

<sup>11</sup> Whether included as relevant in the investigative report or not, the University will make all evidence in the case file, or otherwise in the possession or control of the University, and relevant to the case, available at any hearing to give each Party an equal opportunity to refer to or present the evidence during the hearing.

The Title IX Coordinator will provide written notice at least five (5) business days before the hearing date to the Parties. The written notice will include, at a minimum:

- The date, time, and place of the hearing;
- The participants in the hearing (including but not limited to the Parties, witnesses, etc.).
- The purpose of the hearing.
- The name and contact information of the members of the Hearing Panel. A Party wishing to challenge the participation of a member of the Hearing Panel must notify the Title IX Coordinator, in writing, within three (3) business days of receipt of the notice of hearing, stating the specific reason(s) for the Party's objection. The Title IX Coordinator will determine whether the challenge has merit, and reserves discretion to make changes to the assigned members of the Hearing Panel at any time.

The hearing will take place on the date and time specified in the notice of hearing. If circumstances arise that require a change in the hearing date or time, the Title IX Coordinator will provide both Parties with written notice explaining the reason for such change. The University will arrange for the audio recording of the hearing and may arrange for the preparation of any transcript of the recording that the University deems appropriate.

The hearing will be conducted as follows:

- As a non-adversarial process, the hearing will not follow a courtroom model, and formal rules of evidence will not be observed.
- Consideration will be given to witnesses who may wish to submit or verify previously submitted statements in lieu of being present for the hearing.
- The Complainant and Respondent will be instructed to report for the hearing at a specific day and time. The Complainant and the Respondent will be given the choice to be present at the hearing or submit official written statements; however, all Parties will have access to all written statements. Alternatively, the Parties can also participate in the hearing through utilization of closed-circuit television.
- If either Party fails to attend the hearing and does not submit an official written statement, the Hearing Panel may proceed and determine the complaint on the basis of the evidence available, provided the absent Party was duly notified of the scheduled hearing date.
- Both the Complainant and the Respondent may have an advisor of their own choosing present to support and assist them during the stages of the Process B process. An advisor may not direct questions to the Hearing Panel or witnesses at the hearing, but may consult with the Party that he or she is assisting. The Hearing Panel will not allow an advisor's presence to inhibit the Parties' sharing of information or the conduct of the hearing.
- After reviewing all documents pertaining to the case, the Hearing Panel will interview the Complainant, Respondent, and any witnesses in an order that makes sense to the Hearing Panel. As necessary, the Hearing Panel may recall hearing participants for additional questioning.
- The Complainant and Respondent may submit questions to the Hearing Panel to be asked of the other party or witnesses. However, the Hearing Panel has discretion regarding whether the submitted questions are asked of the other party or witness.

- At no time will the Complainant and Respondent be questioned at the same time or be permitted to question each other.

The Hearing Panel may consider all evidence that they determine is relevant. The Hearing Panel is responsible for maintaining an orderly, fair, and respectful hearing and will have broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding the offending individual, including a Party, witness, or advisor. Any relevant evidence may be considered by the Hearing Panel in making their decision regarding a finding of responsibility.

Both Parties have the right to exclude their own mental health diagnosis and/or treatment from admittance in the hearing. As stated above, medical and psychological records are also excluded unless a Party voluntarily waives that privilege and consents to the records being used. Both Parties also have the right to exclude their own prior sexual history with persons other than the other Party in the judicial or conduct process.

An audio recording/transcript of any live hearing will be created and made available to the Parties for inspection and review.

In order to comply with the Family Educational Rights and Privacy Act (“FERPA”), and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, the hearing process is not open to the general public. Accordingly, the University will not disclose documents prepared in anticipation of the hearing, documents, testimony, or other information introduced at the hearing, and any transcript of the hearing itself may not be disclosed outside of the hearing proceedings, except as may be required or authorized by law and/or University policy.

#### *F. Impact Statements*

Within five (5) business days of the conclusion of the hearing, both the Complainant and the Respondent will be given access to the record of the hearing and offered an opportunity to provide an **impact statement** to the Hearing Panel while they are deliberating on appropriate sanctions. The record of the hearing may not be copied. The impact statement may be no longer than five

1. single-spaced typed pages, using size 12 Times New Roman font and 1-inch margins. The impact statement may not seek to introduce new evidence. This impact statement must be provided to the Title IX Coordinator. The Title IX Coordinator will provide the impact statements to the Hearing Panel only once the Hearing Panel is deliberating on appropriate sanctions. Impact Statements cannot and will not be considered by the Hearing Panel when reaching a determination of responsibility.

#### *G. Determination of Responsibility*

In all investigations into alleged sexual misconduct, the University will evaluate evidence under a “**preponderance of evidence**” standard. The Respondent will be found responsible for the alleged sexual misconduct if the Hearing Panel concludes, based upon careful and objective review of all information presented, that such sexual misconduct more than likely occurred. In reaching this decision, all relevant evidence must be objectively evaluated, and credibility determinations may not be based on a person’s



status as a Complainant, Respondent, or witness. The Hearing Panel cannot defer to any conclusions in the investigative report and must make an independent determination of responsibility.

If the Hearing Panel concludes that the Respondent is responsible for a violation of this Policy, then the Hearing Panel shall receive the Respondent's disciplinary record (i.e., any previous disciplinary action or other violation of Molloy Policy, including this Policy, for which the Respondent was found responsible), and the Party impact statements to consider, as appropriate, in determining sanctions.

If the Hearing Panel determines that the Respondent committed a violation of this Policy, it will determine the appropriate sanctions. The possible sanctions are described in Section XIX below. The Complainant and Respondent will be informed, simultaneously and in writing, of the Hearing Panel's decision as described below.

The Hearing Panel must issue a written determination regarding responsibility within 5 business days of the conclusion of the hearing. The written determination that must include:

1. Identification of the allegations potentially constituting Title IX sexual harassment
2. Findings of fact supporting the determination;
3. Conclusions regarding the application of Molloy's Policy to the facts;
4. As to each allegation, a statement of, and rationale for, the result, including the determination regarding responsibility, any disciplinary sanctions Molloy imposes on the Respondent, and whether remedies designed to restore or preserve equal access to Molloy's education program or activity will be provided by Molloy to the Complainant;
5. Molloy's procedures and permissible bases for the Complainant and Respondent to appeal; and
6. When the determination becomes final.

The written determination will be provided to both Parties simultaneously. Molloy must wait to act on the determination regarding responsibility, including implementing sanctions or remedies, until the determination becomes final. The determination regarding responsibility becomes final either on the date that Molloy provides the Parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. *For the appeal process, please see Section XX.* The Title IX Coordinator is responsible for effective implementation of any remedies. Both Parties have the right to choose whether to disclose or discuss the outcome of the formal grievance process.

## **19. Disciplinary Sanctions and Remedies**

If the Hearing Officer or Hearing Panel finds the Respondent responsible for violating this Policy, the Hearing Officer or Hearing Panel may impose disciplinary sanctions on the Respondent and/or provide remedies to the Complainant. Alternatively, disciplinary sanctions and remedies may be imposed as a result of an informal resolution. Remedies, sanctions, or other actions that are not supportive measures cannot be imposed on the Respondent prior to a finding of responsibility through either the completion of a formal grievance process or informal resolution.

Disciplinary sanctions that may be imposed range from a reprimand or warning through expulsion/termination. Supportive remedies, which can include the supportive measures discussed in Section XIII above, range from services such as counseling or medical services to class and housing modifications, withdrawals, or leaves of absence; punitive or corrective remedies range from a reprimand or warning up to and including expulsion/termination.

The Hearing Officer or Hearing Panel may impose any of the following disciplinary sanctions that are determined to be fair and proportionate to the violation of the Policy under Process A or Process B:<sup>12</sup>

- Reprimand or warning;
- Changes to the Respondent's class or work schedule;
- Reassignment of housing, office, and/or transportation;
- Reassignment of University employment;
- Disciplinary probation;
- Revocation of honors or awards;
- Restriction of Respondent's access to University facilities or activities;
- Community service;
- Issuance of a No-Contact Order to the Respondent or requirement that such an order remain in place;
- Dismissal from, limitation on, or reassignment of University employment;
- Suspension (limited time or indefinite, with or without pay (for employees));
- Expulsion;
- Termination;
- Training; and/or
- Revocation of degree.<sup>13</sup>

In determining appropriate disciplinary sanctions, the Hearing Officer or Hearing Panel may consider any record of past violations of University policies, including the nature and severity of such past violation(s), as well as previous disciplinary action of any kind involving the Respondent. This information is only considered at the sanction stage of the process. As part of the deliberations, the Hearing Officer or Hearing Panel will also consider whether the Respondent poses a continuing risk to the Complainant and/or the University community.

In addition, University policies or contracts may require the University to use additional processes before taking certain employment-related actions with respect to faculty and certain other employees. Where a person covered by such a policy or contract has allegedly engaged in sexual misconduct and/or retaliation, the investigation and grievance process or resolution process will proceed in accordance with the procedures set forth herein, except that the Hearing Officer or Hearing Panel will not impose any discipline that would require the use of additional processes. Instead, the Hearing Officer or Hearing Panel will impose all appropriate discipline that does not require the use of additional processes and then refer the matter, if appropriate, for action under the additional process. The University's disciplinary action under the Policy will be considered complete with the Hearing Officer or Hearing Panel's imposition of discipline and referral, subject to any appeals. For information, please contact the Title IX Coordinator.

<sup>12</sup> This is not an exhaustive list of disciplinary sanctions.

<sup>13</sup> The University reserves the right to revoke any degree awarded for an individual who is found to have engaged in sexual misconduct and/or retaliation prior to conferral of a degree.

### A. Transcript Notation

In accordance with New York State Education Law, Article 129-B, Section 6444 (B)(6), for crimes of violence, including, but not limited to sexual violence, defined as crimes that meet the reporting requirements pursuant to the federal Clery Act established in 20 U.S.C. § 1092(f)(1)(F)(i)(I)–(VIII), the University shall make a notation on the transcript of students found responsible after the completion of the conduct process. Students found responsible of committing a crime meeting the reporting requirements of 20 U.S.C. § 1092(f)(1)(F)(I) –(VIII) shall have noted on their transcript that they were: “*suspended after a finding of responsibility for a code of conduct violation*”; or “*expelled after a finding of responsibility for a code of conduct violation.*” Students who withdraw from the University while such conduct charges are pending and decline to complete the disciplinary process shall have noted on their transcript that they “*withdrew with conduct charges pending.*”

A student has the right to appeal such transcript notation to request its removal in the event of a suspension, provided that such notation shall not be removed prior to one year after conclusion of the suspension. Notations for expulsion shall not be removed. If a finding of responsibility is vacated for any reason, any such transcript notation shall be removed. For more information on the transcript notation policy, please contact the Title IX Coordinator.

## 20. Appeals

All appeals will be conducted in a fair, impartial, and equitable manner. The Respondent and the Complainant may appeal a Hearing Officer or Hearing Panel’s decision, once the written decision has been issued, or a dismissal of a formal complaint (or allegations therein). This appeal must be made in writing within five (5) business days after notification of either the Hearing Officer or Hearing Panel’s decision or the notification of dismissal and sent to the Title IX Coordinator. This appeal must clearly and fully set forth the evidence to support each identified ground of appeal which the appealing Party is asserting.

An appeal may be made for only the following reasons:

4. Procedural irregularity that affected the outcome of the matter;
5. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
6. The Title IX Coordinator, investigator(s), or decision-maker(s) (i.e., the Hearing Officer or Hearing Panel) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter; or
7. The sanction(s) imposed is not proportionate to the finding of facts.

If either Party files an appeal, the other Party will be notified in writing and provided with a copy of the appeal; this non-appealing Party will have the opportunity to also submit a written response for the Appeals Panel to consider. This must be provided to the Appeals Panel within five (5) business days from the date of receipt of the copy of the filed appeal.

The appeal will be considered by a three-member Appeals Panel appointed by the Title IX Coordinator, none of whom will have a conflict of interest or bias. An individual who was involved in the investigation, hearing, or informal resolution process, who made the determination of responsibility or determination of dismissal, or who is the Title IX Coordinator cannot be part of the Appeals Panel.

Prior to appointing the Appeals Panel, the Title IX Coordinator will determine if the appeal meets the grounds for appeal and is timely. The original finding and sanction will stand if the appeal is not timely or substantively eligible, and the decision is final. If the appeal has standing, the documentation is forwarded to the Appeals Panel for their consideration.

Except for appeals brought under (2) above, the Appeals Panel's entire review process will be based on the Party's appeal, the non-appealing Party's response to the appeal, if any, and the Appeals Panel's record of the case. Otherwise, no additional evidence is allowed and no witnesses may be heard. The standard used in an appeal is preponderance of the evidence.

This decision will be issued within thirty (30) days of filing the appeal. The Complainant and Respondent will be notified of this decision and its rationale, in writing, simultaneously. This decision is final. Both Parties have the right to choose whether to disclose or discuss the outcome of the formal grievance process.

## **21. Records of Reports and Investigations**

Molloy will maintain records generated in connection with reports, investigations, grievance processes, and appeals in confidential files for at least seven years. Only those with a right and need to know are permitted access. The Parties will have access to a full and fair record of the hearing in which they were involved and have the right to have all information obtained during the course of the grievance process be protected from public release until the appeals panel makes a final determination unless otherwise required by law. For additional information about maintenance and accessibility to student records, please contact the Title IX Coordinator.

Records required to be kept are:

8. Each sexual misconduct investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript of the hearing, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to University's education program or activity;
9. Any appeal and the result therefrom;
10. Any informal resolution and the result therefrom; and
11. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. These training materials will be publicly available on the University website.

Additionally, the University must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report, complaint of sexual misconduct and/or retaliation, or formal complaint of Title IX sexual harassment. In each instance, the University must

document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the University's education program or activity. If the University does not provide a Complainant with supportive measures, then the University must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

## **22. Prevention and Awareness Education Programs**

Creating a safe and respectful environment is the responsibility of all members of the Molloy community. To promote and maintain this environment, the University engages in comprehensive educational programming to prevent sexual misconduct (including sexual harassment, domestic violence, dating violence, sexual assault, stalking, and retaliation).

Molloy provides primary prevention and awareness programs for all incoming students and employees, and ongoing prevention and awareness campaigns for all students and employees. Molloy also provides mandatory training for leaders of student organizations and student-athletes. Molloy seeks to ensure that all programs are culturally relevant, responsive to community needs, and informed by research and assessed for value.

## **23. NCAA Policy to Combat Campus Sexual Violence**

Molloy supports a positive and thriving athletics team culture that revolves around respect and empathy for all, fostering a climate in which all feel that they are respected, valued and contributing members of our teams and athletics programs. Additionally, Molloy supports an environment in which students (athletes and nonathletes alike) feel safe and secure, both emotionally and physically, and are free of fears of retaliation or reprisal. As such Molloy commits to the following:

1. That members of the athletics department are informed on, integrated in, and compliant with institutional policies and processes regarding sexual violence prevention and proper adjudication and resolution of acts of sexual and interpersonal violence.
2. Our institutional policies and processes regarding sexual violence prevention and adjudication, and the name and contact information for the campus Title IX coordinator are readily available within the department of athletics, and are provided to student-athletes.
3. All student-athletes, coaches and staff are educated each year on sexual violence prevention, intervention, and response.
4. All prospective, continuing and transfer student-athletes complete an annual disclosure form related to any conduct that resulted in an investigation, discipline through a Title IX proceeding or in a criminal conviction for sexual, interpersonal or other acts of violence. Failure to accurately and fully disclose any investigatory activity, a disciplinary action or criminal conviction could result in penalties, including loss of eligibility to participate in athletics as determined by the member institution.

5. To take reasonable steps to confirm whether prospective, continuing and transfer student-athletes have been under investigation, subject to discipline through a Title IX proceeding or criminally convicted of sexual, interpersonal or other acts of violence.
6. To maintain a written policy that directs our athletics staff to gather information that reasonably yields information from the former institution(s) to put the recruiting institutional leadership on notice that the prospect has been under investigation, disciplined through a Title IX proceeding or a criminal conviction for sexual, interpersonal or other acts of violence.

#### **24. Interaction with Other Policies**

Incidents that involve conduct that violates multiple University policies will be addressed on a case by case basis. The University reserves the right to determine the most applicable policy or process and to utilize that policy or process; formal allegations of Title IX sexual harassment, however, must be resolved under this Policy pursuant to Process A or informal resolution, if applicable. If an individual is charged with policy violations under both the Sexual Misconduct Policy and another policy, the alleged violations may be handled through one hearing process, engaging both the Title IX Coordinator and the other presiding University Official or designee. In circumstances where there is a conflict between the procedures and/or processes set forth in the Student Handbook, Employee Handbook, or Faculty Handbook and this Policy, the procedures or process in this Policy govern. Alternatively, a situation that invokes more than one University policy may have allegations divided on the basis of which policy was allegedly violated, with each grouping addressed separately using the grievance process in the pertaining policy.

## Sexual Misconduct Policy

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*Appendix A: Employee and Covered Non-Employee Report, Complaint, and Formal Complaint Form*

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*Appendix C: Definitions Within the Policy*