

# MERCY COLLEGE

<b>Policy Name:</b>	Policy on Equal Opportunity and Non-Discrimination and Notice of Non-Discrimination		
<b>Associated Form(s):</b>	Discrimination Complaint Form	<b>Policy Number:</b>	
<b>Approval Authority:</b>	Board of Trustees	<b>Adopted:</b>	<b>Reviewed:</b>
<b>Responsible Executive:</b>	President	<b>Revised:</b>	<ul style="list-style-type: none"> <li>1) Non-Discrimination, Individual Rights and Equal Education Policy Statement (Student Handbook)</li> <li>2) Policy on Discrimination and Harassment (Student Handbook)</li> <li>3) Anti-Harassment Policy (HR Policies and Procedures Manual)</li> </ul>
<b>Responsible Office:</b>	Equity Compliance Specialist and General Counsel	<b>Contact:</b>	Equity Compliance Specialist

*Approved: Tim Hall*  
*3/23/16*

## **I. Policy on Equal Opportunity and Non-Discrimination**

Mercy College is committed to achieving full equal opportunity in all aspects of College life. The College shall recruit, employ, retain, promote employees, and shall admit and provide services for students without regard to an individual's race, color, creed, national origin, ethnicity, ancestry, religion, age, sex (including pregnancy), sexual orientation, gender, gender identity, transgender status, marital status, familial status, partnership status, disability, predisposing genetic characteristics, alienage, citizenship, criminal conviction, military or veteran status, status as a victim of domestic violence/stalking/sex offenses, unemployment status, or any other legally prohibited basis in accordance with federal, state and city laws.<sup>1</sup>

The College is also committed to providing reasonable accommodations when appropriate to individuals with disabilities, individuals observing religious practices, and employees and students who have pregnancy or childbirth-related medical conditions.

In addition, the College strictly prohibits retaliation against any community member for reporting or opposing discrimination, or cooperating with an investigation of a discrimination complaint.

## **II. Prohibited Conduct Defined**

**A. Discrimination** is treating an individual differently or less favorably because of an individual's protected characteristics—such as race, color, religion, sex, gender, national origin, or any of the other bases prohibited by this Policy.

**B. Harassment** is a form of discrimination that consists of unwelcome conduct based on a protected characteristic that has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile or abusive work or academic environment. Such conduct may be spoken, written, visual, and/or physical. This Policy covers prohibited harassment based on all protected characteristics. Sexual harassment, gender-based harassment and sexual violence, however, are covered by Mercy's Policy and Procedures Relating to Sexual Misconduct.

**C. Retaliation** is adverse treatment of an individual because the individual made a discrimination complaint, opposed discrimination, or cooperated with an investigation of a discrimination complaint.

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<sup>1</sup> Mercy College adheres to federal, state and city laws and regulations regarding nondiscrimination. Should any federal, state or city law or regulation be adopted that prohibits discrimination based on grounds or characteristics not included in this Policy, discrimination on those additional bases will also be prohibited by this Policy.

### **III. Discrimination and Retaliation Complaint Procedures**

Mercy College is committed to addressing discrimination and retaliation complaints promptly, consistently and fairly. The College's Equity Compliance Specialist shall be responsible for, among other things, addressing discrimination and retaliation complaints under this Policy. All Mercy College staff officers, vice presidents, deans, directors, and other persons with managerial responsibility, including academic unit heads, must promptly consult with the Equity Compliance Specialist when a staff member becomes aware of conduct or allegations of conduct that may violate this Policy. All members of the College community are required to cooperate in any investigation of a discrimination or retaliation complaint.

#### **1. Reporting Discrimination and/or Retaliation**

Members of the Mercy College community, including students, employees, applicants, contractors, vendors and visitors, may promptly report any allegations of discrimination or retaliation as set forth below:

a. Community members with discrimination complaints under this Policy should contact the College's Equity Compliance Specialist, or file a complaint online, at: [Link]

b. Community members with complaints of sexual harassment or sexual violence, including sexual assault, stalking, domestic and intimate violence, should contact the College's Title IX Coordinator or Deputy Title IX Coordinator. For contact information, to file a complaint online and/or to learn more about the complaint process pursuant to **Mercy's Policy and Procedures Relating to Sexual Misconduct**, please visit: <https://www.mercy.edu/about-mercy/title-ix>

c. There are separate procedures under which Mercy community members may request and seek review of a decision concerning reasonable accommodations for a disability. These are set forth in **Mercy's Policy and Procedures for Implementing Reasonable Accommodations for Students** and **Policy for Applicant and Employee Disability Accommodations**.

#### **2. Preliminary Review**

Individuals who believe they have experienced discrimination and/or retaliation should promptly contact the Equity Compliance Specialist to discuss their concerns, with or without filing a complaint. Following the discussion, the Equity Compliance Specialist will inform the complainant of the options available. These options include seeking informal resolution of the issues the complainant has encountered or the College conducting a full investigation.

#### **3. Filing a Complaint**

Following the discussion with the Equity Compliance Specialist, individuals who wish to pursue a complaint of discrimination and/or retaliation will be provided with a copy of the complaint form. While it is preferred that complaints are made in writing whenever possible, it is not required for informal resolution or an investigation to proceed.

#### 4. Informal Resolution

Individuals who believe they have been discriminated or retaliated against may choose to resolve their complaints informally. Informal resolution is a process whereby parties may participate in a search for fair and workable solutions. The parties may agree upon a variety of resolutions, including but not limited to modification of work assignment, class reassignment, training for a department, or an apology. The Equity Compliance Specialist will determine if informal resolution is appropriate in light of the nature of the complaint. Informal resolution requires the consent of both the complainant and the respondent and suspends the complaint process for up to thirty (30) calendar days, which may be extended upon consent of both parties, at the discretion of the Equity Compliance Specialist. Resolutions must be in writing, and consented to by both parties. If no informal resolution of a complaint is reached at the conclusion of thirty (30) calendar days, the Equity Compliance Specialist will proceed with an investigation.

#### 5. Investigation

Upon a preliminary review of the complaint, the Equity Compliance Specialist or designee shall commence a full investigation of a complaint, as warranted, or after informal resolution has failed. During the course of the investigation, the complainant and respondent will be apprised to the extent possible regarding the facts and circumstances of the complaint and all of the steps in the process, including witness interviews, the gathering of any physical evidence, the potential for disciplinary procedures and possible sanctions for violations of this Policy.

#### 6. Retaliation prohibited

All persons involved in an investigation (including complainant, respondent and witnesses) are herein informed that retaliation against any person who files a complaint of discrimination, participates in an investigation, or opposes a discriminatory employment or educational practice or policy is prohibited under this policy and federal, state, and city laws that anyone who engages in such retaliatory behavior may be subject to disciplinary charges, which, if sustained, may result in penalties up to and including termination of employment, or permanent dismissal from the College (if the perpetrator is a student.)

#### 7. Withdrawing a Complaint

A complaint of discrimination may be withdrawn at any time during the informal resolution or investigation process. Only the complainant may withdraw a complaint. Requests for withdrawals must be submitted in writing to the Equity Compliance Specialist. The College, however, reserves the right to continue with an investigation if, in its sole discretion, it determines such investigation is warranted. In a case where the College decides to continue with an investigation, it will inform the complainant.

In either event, the Equity Compliance Specialist or her/his designee will notify the respondent in writing that the complainant has withdrawn the complaint and whether College officials have determined that continuation of the investigation is warranted for corrective purposes.

## 8. Timeframe

While some complaints may require extensive investigation, whenever possible, the investigation of a complaint should be completed within sixty (60) calendar days of the receipt of the complaint. If there is a delay in completing the investigation, the Equity Compliance Specialist shall notify the complainant and the respondent in writing and shall keep the parties periodically abreast of timing issues.

## 9. Report of Findings

Following the completion of the investigation, the Equity Compliance Specialist will report the findings to the Dean of Student Affairs if the respondent is a student; to the Provost if the respondent is a faculty member; or to the Executive Director of Human Resources if the respondent is an employee other than a faculty member.

## 10. Disciplinary Action

The appropriate College official (i.e. the Dean of Student Affairs, Provost or Executive Director of Human Resources) will review the investigation report. When it is determined that, by a preponderance of evidence, a violation of this policy has occurred, the College official shall authorize such action as she/he deems necessary to properly correct the effects of or to prevent further harm to an affected party or others similarly situated, in accordance with applicable Mercy handbooks, policies, rules and/or collective bargaining agreements. The range of penalties that may be imposed upon a student found to have violated this Policy includes, but is not limited to: probation, removal from housing, removal from a sports team or other school activity, suspension or expulsion following the relevant disciplinary procedures. The range of penalties that may be imposed upon an employee (including faculty) who is found to have violated this policy may include, but is not limited to: reprimand, suspension or termination of employment following the relevant disciplinary procedures, if applicable.

The Equity Compliance Specialist shall forward to the President of the College the report of findings of the investigation, and shall apprise the President of the recommended sanction(s) to be imposed. The President shall make a determination whether the findings and/or sanction recommended is appropriate. If the President is the respondent, the report shall be provided to the Board of Trustees, which will determine whether the findings and/or sanction is appropriate.

The Equity Compliance Specialist or her/his designee shall then apprise the complainant and respondent contemporaneously in writing of the outcome and action, if any, taken as a result of the complaint.

## 11. Interim Protective Measures and Accommodations

The College will take immediate steps to protect the complainant in the educational and employment setting, including taking interim protective measures and provide accommodations, as appropriate, during an investigation. The complainant will be informed by the Equity Compliance Specialist or her/his designee in writing of such interim protective measures and accommodations, which may include, among other things:

- a) Making necessary changes to academic programs;
- b) Making necessary changes to residential housing situations;
- c) Changing an employee's work assignment or schedule; and/or
- d) Offering counseling services to the complainant and the respondent, through the Health and Wellness Center or a referral to an off-campus agency.

In certain circumstances, interim suspension of an employee or student may be imposed if the conduct is severe and pervasive, in accordance with applicable Mercy handbooks, policies, rules and/or collective bargaining agreements.

#### 12. False and Malicious Accusations

Members of the College community who make false and malicious complaints of discrimination, as opposed to complaints which, even if erroneous, are made in good faith, will be subject to disciplinary action.

#### 13. Anonymous Complaints

All complaints will be taken seriously, including anonymous complaints. Individuals do have the option at any time to file an anonymous complaint through the College's Whistleblower Hotline at **1-888-OK-MERCY (1-888-656-3729)**. In the event that a complaint is anonymous, the complaint should be investigated as thoroughly as possible under the circumstances, although the College may be limited in the extent of the investigation that it can conduct.

#### 14. Responsibilities

##### a. Equity Compliance Specialist

The College's Equity Compliance Specialist and designee(s) (if applicable) shall be fully trained and equipped to carry out her/his responsibilities (as described above), and shall also be responsible for ensuring the following:

- That managers receive annual training on this Policy;
- Annual dissemination of this Policy to the entire College community, including the Equity Compliance Specialist's name and contact information as well as resources available at the College. Such information should be widely disseminated, including placement on the College website.

##### b. Managers

Managers must take steps to create a workplace free of discrimination, harassment and retaliation, and must take each and every complaint seriously. Managers must promptly consult with the Equity Compliance Specialist when they become aware of conduct that may violate this Policy.

For purposes of this Policy, managers are employees who either (a) have the authority to make tangible employment decisions with regard to other employees, including the authority to hire, fire, promote, compensate or assign significantly different responsibilities; or (b) have the authority to make recommendations on tangible employment decisions that are given particular

weight. Managers include but are not limited to: vice presidents, directors, deans, academic unit heads, and staff officers.

c. Members of the College Community-at-Large

Members of the College community who become aware of allegations of discrimination or retaliation should encourage the aggrieved individual to report the alleged behavior.

All employees and students are required to cooperate in any investigation.

**IV. Some Relevant Laws Concerning Non-discrimination and Equal Opportunity**

Section 1324b of the Immigration and Nationality Act prohibits employers from intentional employment discrimination based upon citizenship or immigration status, national origin, and unfair documentary practices or “document abuse” relating to the employment eligibility verification or Form I-9 process. Document abuse prohibited by the statute includes improperly requesting that an employee produce more documents than required by the I-9 form, or a particular document, such as a “green card,” to establish the employee’s identity and employment authorization; improperly rejecting documents that reasonably appear to be genuine during the I-9 process; and improperly treating groups of applicants differently when completing the I-9 form.

Executive Order 11246, as amended, prohibits discrimination in employment by all institutions with federal contracts and requires affirmative action to ensure equal employment opportunities.

Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination in employment (including hiring, upgrading, salaries, fringe benefits, training, and other terms, conditions, and privileges of employment) on the basis of race, color, religion, national origin, or sex.

Title VI of the Civil Rights Act of 1964 prohibits discrimination or the denial of benefits because of race, color, or national origin in any program or activity receiving federal financial assistance.

Equal Pay Act of 1963, as amended, requires that men and women performing substantially equal jobs in the same workplace receive equal pay.

Title IX of the Education Amendments of 1972 prohibits discrimination or the denial of benefits based on sex in any educational program or activity receiving federal financial assistance.

Age Discrimination in Employment Act, as amended, prohibits discrimination against individuals who are age 40 or older.

Section 504 of the Rehabilitation Act of 1973 defines and forbids acts of discrimination against qualified individuals with disabilities in employment and in the operation of programs and activities receiving federal financial assistance.

Americans with Disabilities Act of 1990, as amended, prohibits discrimination on the basis of disability.

Genetic Information Nondiscrimination Act of 2008 prohibits employment discrimination based on genetic information.

New York City Human Rights Law prohibits discrimination based on age (18 and older), race, creed, color, national origin, gender (including gender identity and expression), disability, marital and familial status, partnership status, sexual orientation, alienage or citizenship status, arrest or conviction record, unemployment status, or status of an individual as a victim of domestic violence, sex offenses or stalking.

New York City Workplace Religious Freedom Act requires an employer to make accommodation for an employee's religious needs.

New York State Education Law Section 224-a. requires institutions of higher education to make accommodations for students who are unable to attend classes or take examinations due to their religious beliefs.

New York State Human Rights Law prohibits discrimination based on race, creed, color, national origin, sexual orientation, military status, sex, age (18 and older), marital status, familial status, transgender status, domestic violence victim status, disability, predisposing genetic characteristics or prior arrest or conviction record.

New York City Pregnant Workers Fairness Act provides that employers provide pregnant employees with reasonable accommodations for the employee's pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.



## **NOTICE OF NON-DISCRIMINATION**

Mercy College is committed to fostering a diverse community of outstanding faculty, staff, and students, as well as ensuring equal educational opportunity, employment, and access to services, programs, and activities, without regard to an individual's race, color, national origin, religion, creed, age, disability, sex, gender identity, gender expression, transgender status, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction. Employees, students, applicants or other members of the College community (including but not limited to contractors, vendors or visitors) may not be subjected to harassment that is prohibited by law, or treated adversely based upon a protected characteristic, or retaliated against for making a complaint regarding such adverse treatment.

The College is also committed to providing reasonable accommodations when appropriate to individuals with disabilities, individuals observing religious practices, and employees who have pregnancy or childbirth-related medical conditions. Retaliation for reporting or opposing discrimination, cooperating with an investigation of a discrimination complaint, or requesting an accommodation is also prohibited.

The College's policy addressing discrimination and harassment is set forth more fully in the **Mercy College Policy on Equal Opportunity and Nondiscrimination [Link]**. The College's policy addressing sexual harassment, gender-based harassment and sexual violence is set forth more fully in the **Mercy College Policies and Procedures Relating to Sexual Misconduct** <https://www.mercy.edu/about-mercy/sites/www.mercy.edu/about-mercy/files/basicpage/documents/MercyTitleIXPolicy.pdf>

Inquiries regarding the application of Title IX and other laws, regulations and policies prohibiting discrimination may be directed to Ana Gonzalez, Esq., Title IX Coordinator and Equity Compliance Specialist, [agonzalez@mercy.edu](mailto:agonzalez@mercy.edu), 914-674-7679.