



Policy Name:	Policy on Equal Opportunity and Non-Discrimination, and Notice of Non-Discrimination		
Associated Form(s):	Online Complaint Form https://www.mercy.edu/discrimination-complaint-form		Policy Number: 2019-4
Reviewed:	President <i>Timothy L. Hall</i>	Date: Non-Academic Policy Review Advisory Council	Date: 10/11/19
Approval Authority:	Board of Trustees	Adopted:	October 24, 2019
Responsible Executive:	President	Revised:	Policy on Equal Opportunity and Non-Discrimination, # 2016-5
Responsible Office:	Equity Compliance Specialist and General Counsel	Contact:	Equity Compliance Specialist

I. APPLICABILITY OF THIS POLICY

This Policy applies to the following Mercy College community members (“Community Members”), all of whom can be either the victim of prohibited discrimination, harassment or retaliation (the “complainant”) or the person accused of such conduct (the “respondent”):

A. Students.

B. Employees, including all full-time and part-time faculty and staff at all of Mercy College’s campuses and locations.

C. Applicants for employment or student admission to the College.

D. Contractors, which for the purposes of this Policy means contractors, subcontractors, vendors, consultants or other persons providing services pursuant to a contract in the workplace with the College or who is an employee of such a contractor, subcontractor, vendor, consultant or other person providing services pursuant to a contract in the workplace with the College (hereinafter “Contractors”).

II. POLICY STATEMENT

A. Equal Opportunity Statement

Mercy College is committed to achieving full equal opportunity in all aspects of College life. The College shall recruit, employ, retain, and 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, sexual orientation, gender, gender identity or expression, transgender status, marital status, familial status, partnership status, disability (including HIV/AIDS), genetic information, predisposing genetic characteristics, alienage, citizenship, criminal arrest and conviction records, military or veteran status, salary history, credit history, caregiver status, pregnancy or lactation status, sex and reproductive decisions, status as a victim of domestic

violence/stalking/sex offenses/sex abuse, unemployment status, or any other legally prohibited basis in accordance with federal, state, county and city laws.

B. Non-Discrimination Policy

The College is committed to maintaining a workplace for its employees and an academic and social environment for its students free from prohibited discrimination, harassment and retaliation, as defined below. Therefore, the College strictly prohibits discrimination, harassment and retaliation of any of its students or applicants for admission, employees, applicants for employment, and Contractors.

C. Other Relevant Policies

1. The College's Reasonable Accommodations Policies

The College is 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 accordance with Reasonable Accommodations Policies. There are separate procedures under which 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 and Academic Adjustments for Students* and *Mercy's Policy and Procedures for Implementing Reasonable Accommodations for Employees* (<https://www.mercy.edu/about-mercy/mercy-policy>).

2. The College's Policy and Procedures Related to Sexual Misconduct

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. 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>.

3. Application of Other College Policies

When conduct may involve more than one policy, the College will in its sole discretion determine which policy or policies shall govern the handling of a potential violation, based on the circumstances of the allegation and the terms of any other policy. An individual who has a question about which policy applies in a specific instance can contact the College's Equity Compliance Specialist at TitleIX.Equity@mercy.edu or (914) 674-7679.

III. PROHIBITED CONDUCT—DEFINITIONS

A. Discrimination is the adverse treatment of a Community Member because of that individual's actual or perceived protected characteristics—such as race, color, religion, sex, gender, national origin, or any of the other bases referenced above which are prohibited by this Policy. Such conduct can also be unlawful if it subjects a Community Member to inferior terms, conditions or privileges because of that individual's membership or perceived membership in one or more of these protected categories.

B. Harassment is a form of discrimination that, in sum, consists of unwelcome conduct based on a Community Member's protected characteristic that has the purpose or effect of unreasonably interfering with that individual's work or academic performance or which creates an intimidating, hostile or offensive work environment for employees and Contractors and an intimidating, hostile or offensive academic and/or social environment for students. The conduct may be spoken, written, visual, and/or physical. Conduct that a reasonable person would consider petty slights and/or trivial inconveniences may not amount to illegal harassment. **Please note that this Policy covers prohibited harassment based on all protected characteristics, except it does not apply**

to sexual harassment or sexual violence, because those matters are covered by *Mercy's Policy and Procedures Relating to Sexual Misconduct*.

While no list can be exhaustive, some examples of actions that may constitute prohibited harassment when based on a protected characteristic may include, but are not limited to:

- Verbal abuse or hostile behavior, which could include insulting, teasing, mocking, degrading, or ridiculing another person or group;
- Inappropriate physical contact, comments, questions, advances, jokes, epithets, or demands;
- Racial slurs, derogatory remarks about a person's accent, or display of racially offensive symbols;
- Unwelcome conduct of a non-sexual nature based on actual or perceived sex, such as mocking a person's appearance or clothing as more suited to a person of the opposite sex, or intentionally using the wrong pronoun to identify a transgender individual;
- Physical assault; or
- Displays or electronic transmission of derogatory, demeaning, or hostile materials.

Harassment can occur in many mediums and locations, including via email, text, voicemail, social media or other electronic forms of communication or messaging systems, and can occur on-campus, at College-sponsored events or programs, or other off-campus venues.

C. Retaliation. The College strictly prohibits retaliation against any Community Member for reporting or opposing discrimination or harassment or cooperating with an investigation of such a complaint. Retaliation is the adverse treatment of an individual because the individual made a discrimination or harassment complaint, opposed discrimination or harassment, was a witness to discrimination or harassment, or cooperated with an investigation of a discrimination or harassment complaint. Retaliation can also occur based on an individual making a retaliation complaint. Retaliation includes, by way of example, threatening, intimidating, harassing or any

other conduct that would discourage a reasonable person from engaging in activity protected under this Policy.

D. Other Inappropriate Conduct. While this Policy is intended to prevent prohibited discrimination, harassment and retaliation as defined in Section III above, conduct by any Community Member or third party which does not rise to the level of prohibited discrimination, harassment or retaliation may still be prohibited by the College. Examples of such conduct include but is not limited to bullying, inappropriate verbal, physical, written or other kind of conduct directed at any Community Member or a third party on one of the College's campuses or at a College-sponsored event. The College will, in its discretion and in accordance with all other Mercy College handbooks, written contracts, policies, procedures and/or collective bargaining agreements, process such complaints and take action as it deems appropriate, including discipline or other penalties, but is not bound by the procedures in this Policy.

IV. DISCRIMINATION, HARASSMENT AND RETALIATION COMPLAINT PROCEDURES

A. The College's Commitment

The College is committed to addressing prohibited discrimination, harassment and retaliation complaints promptly, consistently and fairly to the extent possible. Although there is no time limit to file a complaint with the College, the College encourages immediate reporting. In general, the College's Equity Compliance Specialist shall be responsible for, among other things, addressing prohibited discrimination, harassment and retaliation complaints under this Policy.

B. Reporting Prohibited Discrimination, Harassment and/or Retaliation

1. **Community Members** (who are not supervisory or managerial employees) with complaints under this Policy, or those who have witnessed, who believe they have witnessed or

who have knowledge of such conduct, should immediately report the conduct. Set forth below are the College's reporting procedures for Community Members:

a) Students and Student Applicants.

In the case of incidents of prohibited discrimination, harassment or retaliation alleged to have been committed against students or student applicants, the student complainant or other reporting party may make a report, either online at <https://www.mercy.edu/discrimination-complaint-form>, or to any of the following campus officials/offices:

- The Equity Compliance Specialist;
- The Office of Campus Safety;
- The Office of the Vice President of Student Affairs; or
- The Office of Residential Life.

b) Employees, Applicants for Employment and Contractors.

In the case of incidents of discrimination, harassment or retaliation alleged to have been committed against employees, employment applicants or Contractors, the complainant or other reporting party may make a report, either online at <https://www.mercy.edu/discrimination-complaint-form>, or to any of the following:

- Their immediate supervisor;
- The next level supervisor or manager in the relevant department;
- The Equity Compliance Specialist; or
- The Office of Human Resources.

Once any of the campus individuals or officials/offices above is notified of an incident of alleged discrimination, harassment or retaliation, they shall immediately report the matter to the Equity Compliance Specialist and shall coordinate with the appropriate College office(s) to address the

matter in accordance with this Policy, including taking interim protective measures and accommodations.

2. **All management and supervisory personnel** have an affirmative duty to and are required to immediately report any discrimination, harassment, or retaliation that they observe, learn about from others, or reasonably suspect has occurred with respect to any Community Member to:

- The Equity Compliance Specialist.

For purposes of this Policy, managers and supervisors 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 and supervisors include but are not limited to: vice presidents, directors, deans, associate deans and academic unit heads. For questions regarding supervisor or manager title or status, contact the Office of Human Resources.

It is imperative that managers and supervisors not only adhere to but enforce this Policy. A manager or supervisor who fails to report discrimination, harassment or retaliation that they knew or should have known about could be subject to disciplinary action up to and including termination. Managers and supervisors have a special obligation not to engage in discrimination, harassment, or retaliation. Managers and supervisors who knowingly allow discrimination, harassment and/or retaliation to continue will be disciplined up to and including termination in accordance with relevant Mercy College handbooks, written contracts, policies or procedures and/or collective bargaining agreements.

3. Any employee who receives a complaint shall maintain, to the greatest extent possible, the privacy of all information in connection with the complaint, including the identities of the complainant and the respondent. Such information will be shared only with those who have a legitimate need for the information.

4. All Community Members are required to cooperate in any investigation of a discrimination, harassment or retaliation complaint.

V. INVESTIGATION OF PROHIBITED DISCRIMINATION, HARASSMENT AND/OR RETALIATION COMPLAINTS

The following is the general procedure for the investigation of prohibited discrimination, harassment and/or retaliation complaints under this Policy:

A. Meeting with the Complainant

Upon the receipt of a complaint, the Equity Compliance Specialist shall, whenever possible, meet with the complainant. The Equity Compliance Specialist will inform the complainant of the options available. These options generally include a complainant seeking informal resolution of the issues the complainant has encountered or the College conducting a full investigation.

B. Filing of a Complaint

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

C. Informal Resolution

Individuals who believe they have been discriminated, harassed 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 in writing, and suspends the complaint process for up to thirty (30) calendar days, which may be extended upon consent of both parties in writing, at the discretion of the Equity Compliance Specialist. Resolutions must be agreed to in writing by both parties. If no informal resolution of a complaint is reached at the conclusion of thirty (30) calendar days or an agreed upon extension, the Equity Compliance Specialist will proceed with an investigation.

D. Investigation

The College will conduct a prompt, fair and thorough investigation to the extent possible. Upon a preliminary review of the complaint, the Equity Compliance Specialist 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, and the potential for corrective and/or disciplinary procedures and possible sanctions for violations of this Policy.

E. Withdrawing a Complaint

A complaint under this Policy 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 despite a complainant's withdrawal of a complaint 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 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 or disciplinary purposes.

F. Timeframe of the Investigation

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.

G. Report of Findings

Following the completion of the investigation, the Equity Compliance Specialist will provide a report of the findings of whether there has been a violation under this Policy to the appropriate College official who would be responsible for taking corrective measures or issuing discipline for violations of this Policy, as set forth below. For example, in general, the report is provided as follows:

- If the respondent is a student, to the Vice President of Student Affairs;
- If the respondent is a non-faculty employee, to the Executive Director of Human Resources;
- If the respondent is a faculty member, to the Provost;
- If the respondent is a senior level manager, to the President;
- If the respondent is the President, to the Chair of the Board of Trustees;
- If the respondent is a member of the Board of Trustees, to the General Counsel; or
- If the respondent is a Contractor, to the General Counsel.

VI. DISCIPLINARY ACTION

If a violation of this Policy has occurred, the appropriate College official(s) as determined by the College, in consultation with the Equity Compliance Specialist, shall authorize such action as they deem 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 College handbooks, written contracts, policies or procedures and/or collective bargaining agreements.

The range of penalties that may be imposed for those found to have violated this Policy include but are not limited to the following:

- **Students:** probation, removal from housing, removal from a sports team or other school activity, suspension or expulsion following the relevant disciplinary procedures.
- **Employees** (including faculty): reprimand, suspension or termination of employment following the relevant disciplinary procedures, if applicable.
- **Contractors:** If the respondent is neither a Mercy student nor a Mercy employee, the College will take appropriate action, such as restricting the respondent's access to the Colleges' campuses.

The Equity Compliance Specialist shall, to the extent possible, apprise the complainant and respondent contemporaneously in writing of the outcome and action, if any, taken as a result of the complaint.

VII. APPEALS

Any Mercy College employee or student who is a respondent or a complainant may appeal a finding under this Policy and/or the sanction to be imposed within ten (10) days from the written notice of outcome and action, to the Title IX/Equity Compliance Appeals Panel on the following grounds: (i) procedural error, (ii) newly-discovered evidence that was not reasonably available at

the time of the finding, or (iii) the disproportionate nature of the penalty. The Panel may remand the finding back to the Equity Compliance Specialist for another review of the matter in light of any procedural errors or newly discovered evidence, or may modify the penalty. Such appeal must be in writing signed by the individual seeking the appeal. This process does not preclude any Community Member from also filing a grievance or appeal under any other applicable Mercy College handbooks and/or collective bargaining agreements.

VIII. 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 by providing accommodations, as appropriate, during an investigation. The complainant will be informed by the Equity Compliance Specialist in writing of such interim protective measures and accommodations, which may include, among other things:

- Making necessary changes to academic programs;
- Making necessary changes to residential housing situations;
- Changing an employee's work assignment or schedule; and/or
- 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, in the College's discretion, it is warranted based on the facts and circumstances of the case in accordance with applicable Mercy College handbooks, written contracts, policies or procedures and/or collective bargaining agreements.

IX. FALSE AND MALICIOUS ACCUSATIONS

Any Community Member who makes false and/or malicious complaints of discrimination, harassment or retaliation under this Policy, as opposed to complaints which, even if erroneous, are made in good faith, will be subject to disciplinary action.

X. ANONYMOUS COMPLAINTS

All complaints under this Policy 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 will 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.

XI. RESPONSIBILITIES

A. Equity Compliance Specialist

The College's Equity Compliance Specialist shall be trained to carry out their responsibilities (as described above), and shall also be responsible for ensuring the following:

1. That all managers and supervisors receive annual training on this Policy;
2. That this Policy is disseminated annually 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 and shall be provided in the language provided by an employee if identified at the time of hiring as a language other than English.

For the purposes of this Policy, in any situation, the Equity Compliance Specialist may designate certain duties to a designee who is trained to carry out the responsibilities under this Policy.

B. Managers and Supervisors

In addition to promptly reporting complaints under this Policy to the Equity Compliance Specialist, managers and supervisors must take steps to create a workplace free of discrimination, harassment and retaliation, such as participating in and requesting, when necessary, departmental Equity Compliance training. They must also take each and every complaint seriously.

C. Members of the College Community-at-Large

Community Members who become aware of allegations of discrimination, harassment or retaliation should encourage the aggrieved individual to report the alleged behavior. All employees and students are required to cooperate in any investigation.

XII. FILING EXTERNAL COMPLAINTS

Complainants have the right at any time to file complaints alleging violations of other federal, state, county or city laws with any of the other appropriate agencies, such as the New York State Division of Human Rights (<https://dhr.ny.gov/>), Westchester County Human Rights Division (<https://humanrights.westchestergov.com/>), the New York City Commission on Human Rights (<https://www1.nyc.gov/site/cchr/index.page>) or the United States Equal Opportunity Employment Commission (<https://www.eeoc.gov/>).

NOTICE OF NON-DISCRIMINATION

Mercy College is committed to fostering a diverse community of outstanding faculty, staff, and students, as well as ensuring equal opportunity in employment and equal opportunity in education including educational programs and activities, without regard to an individual's race, color, creed, national origin, ethnicity, ancestry, religion, age, sex, sexual orientation, gender, gender identity or expression, transgender status, marital status, familial status, partnership status, disability (including HIV/ AIDS), genetic information, predisposing genetic characteristics, alienage, citizenship, arrest and conviction records, military or veteran status, salary history, credit history, caregiver status, pregnancy or lactation status, sex and reproductive decisions, status as a victim of domestic violence/stalking/sex offenses/sex abuse, unemployment status, or any other legally prohibited basis in accordance with federal, state, county and city laws.¹ The College does not discriminate on the basis of any of the protected characteristics referenced above in its programs and activities or in its treatment, admission or access to its programs or activities. Therefore, discrimination or harassment of College employees, students, applicants for employment or admission, and non-employees (defined explicitly to include *only* contractors, subcontractors, vendors, consultants or other persons providing services pursuant to a contract in the workplace or who is an employee of such a contractor, subcontractor, vendor, consultant or other person providing services pursuant to a contract with the College) is strictly prohibited by the College.

¹ Mercy College adheres to federal, state, county and city laws and regulations regarding nondiscrimination. Should any federal, state, county 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.

In addition, retaliation for (1) reporting or opposing discrimination or harassment, (2) cooperating with an investigation of a discrimination or harassment complaint, or (3) requesting an accommodation, is strictly prohibited by the College.

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, which is set forth more fully in the *Mercy College Policy and Procedures for Implementing Reasonable Accommodations and Academic Adjustments for Students* and the *Mercy College Policy and Procedures for Implementing Reasonable Accommodations for Employees* (<https://www.mercy.edu/about-mercy/mercy-policy>).

The College's policy addressing discrimination, harassment and retaliation is set forth more fully in the *Mercy College Policy on Equal Opportunity and Non-Discrimination*. The College's policy addressing sexual harassment and sexual violence is set forth more fully in the *Mercy College Policies and Procedures Relating to Sexual Misconduct* available on the College's webpage, <https://www.mercy.edu/about-mercy/mercy-policy>

The College further adheres to the state, county and city laws regarding pay equity via the *Policy and Procedures Relating to the New York City and New York State Laws Barring Inquiries into the Wage and Salary Histories of Applicants and Current Employees*: <https://www.mercy.edu/about-mercy/mercy-policy>

Inquiries regarding the application of Title IX and other laws, regulations and policies prohibiting discrimination or harassment should be directed to: Thomas McDonald, Mercy College Title IX Coordinator/Equity Compliance Specialist, at TitleIX.Equity@mercy.edu or 914-674-7679.

Inquiries regarding reasonable accommodations and academic adjustments for students should be directed to: Sara Venezian in the Office of Accessibility, Main Hall, Room 109, Dobbs Ferry, svenezian@mercy.edu or (914) 674-7523.

Inquiries regarding reasonable accommodations for employees should be directed to: Annette Picora in the Office of Human Resources, Verrazano Hall, Dobbs Ferry apiecora@mercy.edu, (914) 674-7337.