

## **Title IX Sexual Harassment Complaint Procedures**

### **A. INTRODUCTION**

Marion Military Institute is committed to providing a workplace and campus community free of sexual misconduct and harassment. As required by Title IX of the Education Amendments of 1972, the College does not discriminate on the basis of sex in its education programs and activities. This includes discrimination affecting employees of the college and applicants for employment, students and applicants for admission, or members of the public. All members of the College community are expected to conduct themselves in a manner that does not infringe upon the rights of others, whether on college premises or at any College owned off campus location and while participating in any educational program or activity of the College.

Sexual harassment, which includes sexual misconduct and sexual assault, is a form of sex discrimination which is prohibited under Title IX of the Education Amendments of 1972 and the Violence Against Women Act. This policy is intended to reaffirm the College's commitment to address sexual harassment and take steps to prevent its reoccurrence and preserve or restore equal access to the College's education programs and activities. Dating violence, domestic violence, and stalking may also be considered forms of sexual discrimination. Due to the seriousness of these offenses, the College has adopted specific policies and procedures, outlined in the Student Handbook, employment policies, and webpage, to address alleged instances of sexual harassment, sexual misconduct, sexual assault, dating violence, domestic violence, and stalking. The College believes that no person should bear the effects of sexual harassment alone. When such conduct occurs, the College's paramount concern is for the safety and well-being of those impacted. To support and assist students, the College provides a range of resources that include a trained counselor.

Under Title IX, individuals reporting allegations related to sexual harassment and/or sexual violence, have the right to a resolution of their complaint, to have the college conduct a prompt, thorough and impartial investigation, and to receive supportive measures to ensure the safety and wellbeing of the individuals involved and the college community.

When allegations of sexual harassment and/or sexual violence in any form are brought to the attention of the Title IX Coordinator, and if a responding party is found to have violated this policy, serious sanctions will be used to prevent its reoccurrence. Marion Military Institute does not tolerate or condone retaliation. Individuals wishing to report sexual harassment and/or sexual violence and/or to make inquiries concerning the application of Title IX at the College may contact:

Mrs. Carmon Fields (Employees)  
Director of Human Resources and Compliance 1101  
Washington Street  
Marion, Alabama 36756  
Phone: 334-683-2368  
Email: [cfields@marionmilitary.edu](mailto:cfields@marionmilitary.edu)

Mrs. Carmon Fields (Students) Title IX  
Coordinator  
1101 Washington Street  
Marion, Alabama 36756  
Phone: 334-683-2368  
Email: [cfields@marionmilitary.edu](mailto:cfields@marionmilitary.edu)

Information regarding the Title IX Coordinator and their role will be provided to all faculty, staff, students, applicants for admissions, and applicants for employment. Also, this information is available on the College website at [www.marionmilitary.edu](http://www.marionmilitary.edu) under the Title IX webpage.

## **POLICY**

The U.S. Department of Education's [Office for Civil Rights](#) (OCR) enforces, among other statutes, Title IX of the Education Amendments of 1972. Title IX protects people from discrimination based on sex in education programs or activities that receive Federal financial assistance. Title IX states that:

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

## B. DEFINITIONS RELATING TO SEXUAL HARASSMENT

Many terms are used in the context of sexual harassment. The following will provide some common definitions and examples.

Actual knowledge: The notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or any official of the College who has authority to institute corrective measures on behalf of the College shall be deemed actual knowledge on the part of the College.

Complainant: is an individual who is alleged to be the victim of conduct that could constitute sexual harassment. For the purposes of this procedure a Complainant may be an individual applying for admission or employment, an employee, a student or an individual otherwise participating in or attempting to participate in the College's education programs and activities.

Respondent: is an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Formal complaint: is a document filed by the complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the College investigate the allegation of sexual harassment. Note: At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in an educational program or activity of the College at which the formal complaint is filed.

Consent: "Consent" must be informed, voluntary, and mutual and can be withdrawn at any time. There is no consent when there is force, expressed or implied, or when coercion, intimidation, threats, or duress is used. Whether or not a person has taken advantage of a position of influence over another person may be a factor in determining consent. Silence or absence of resistance does not imply consent. Past consent to sexual activity with another person does not imply ongoing future consent with that person or consent to that same sexual activity with another person.

Incapacitation: An individual who is incapacitated is unable to give consent to sexual contact. States of incapacitation include sleep, unconsciousness, intermittent consciousness, intoxication, or any other state where the individual is unaware that sexual contact is occurring or is otherwise unable to give informed and voluntarily consent. Incapacitation may also exist because of a mental or developmental disability that impairs the ability to consent to sexual contact. Example: A person who is taking pain medication and falls asleep under the influence of the medication can be incapacitated and not be able to give consent to sexual contact.

Course of Conduct: Two or more acts, including, but not limited to, acts in which the individual directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.

Reasonable Person: A reasonable person under similar circumstances and with similar identities to the victim.

Substantial Emotional Distress: Significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

Sexual Misconduct: Committing sexual abuse, sexual assault, sexual harassment, sexual exploitation, or statutory rape, as defined below or under Alabama state law.

Harassment: The striking, shoving, kicking, or otherwise touching or making physical contact in regard to another for the purpose of harassing, annoying or alarming; and/or directing abusive or obscene language or making an obscene gesture toward someone for the purpose of harassing, annoying, or alarming. Example: Making or using persistent derogatory comments, epithets, or slurs that place a person in a hostile or fearful environment or where the person's safety is in jeopardy.

## Definitions of Sexually Based Offenses

Sexual harassment: Conduct on the basis of sex that satisfies one or more of the following:

- A school employee conditioning education benefits on participating in unwelcome sexual conduct (i.e. quid pro quo);
- Unwelcomed conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity; or
- Sexual Assault, Stalking, Dating Violence, Domestic Violence as defined in this Policy.

**Sexual Assault** means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation, including Rape, Fondling, Incest, and Statutory Rape as defined in this Policy.

**Sexual Assault/Rape** means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the Consent of the Complainant.

**Sexual Assault/Fondling** means the touching of the private body parts of another person for the purpose of sexual gratification, without the Consent of the Complainant, including instances where the victim is incapable of giving Consent because of his/her age or because of his/her temporary or permanent mental incapacity.

**Incest** means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

**Statutory Rape** means sexual intercourse with a person who is under the statutory age of Consent.

**Dating Violence** means violence committed by a person—

(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship,
- The type of relationship,
- The frequency of interaction between the persons involved in the relationship.

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

**Domestic Violence** includes felony or misdemeanor crimes of violence committed by:

- a current or former spouse or intimate partner of the victim,
- a person with whom the victim shares a child in common,
- a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
- a person similarly situated to a spouse of the victim under the domestic or family violence laws of Alabama, or
- any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Alabama.

**Stalking** means engaging in a Course of Conduct directed at a specific person that would cause a Reasonable Person to—

- fear for his or her safety or the safety of others; or
- suffer Substantial Emotional Distress.

## Victims Option to Report

Students and employees who are victims of crime including rape, acquaintance rape, domestic violence, dating violence, sexual assault, or stalking, are encouraged by the College to report but do have the option not to report the incident to campus law enforcement, or local law enforcement. In those cases, the victim may still seek assistance confidentially from Tuscaloosa Safe Center or any other victim service agency of their choosing.

## Formal Complaint Process

### A. INITIAL STEPS

Any student or employee of the College or applicant for employment or admission who has a complaint against a student or a member of the College faculty, staff, or administration concerning sexual harassment (Title IX of the Educational Amendments of 1972) or has knowledge of any conduct constituting sexual harassment in an educational program or activity of the College or which occurred on property owned by the College or controlled by the College should

report the complaint to the campus Title IX Coordinator [www.marionmilitary.edu](http://www.marionmilitary.edu) . An educational program or activity of the College includes, but is not limited to locations, events or circumstances over which the College exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes buildings owned or controlled by a student organization that is officially recognized by the College.

## B. REPORTING A COMPLAINT

Any individual may report sexual harassment incident to Title IX Coordinator in person, by email, by telephone, or in writing. The report must include the names of the Complainant(s) and Respondent(s), approximate date of incident, facts of the incident, and contact information for the person submitting the complaint.

The Title IX Coordinator will respond in writing to the person submitting the complaint as soon as practicable, but not exceeding five (5) business days. If the person submitting the complaint is not the Complainant, the Title IX Coordinator will also contact the Complainant within five (5) business days.

If after a discussion with the Complainant, the Title IX Coordinator determines that the complaint does not qualify as a Title IX Complaint, the Title IX Coordinator will notify the Complainant in writing and may redirect the Complaint to the appropriate committee.

If after a discussion between the Complainant and the Title IX Coordinator, the Title IX Coordinator determines that the complaint meets the criteria of a Title IX Complaint and the Complainant requests to file a formal complaint, the Title IX Coordinator will initiate the formal complaint process.

## C. SUPPORTIVE MEASURES

Supportive measures mean non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the College's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The College must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such

confidentiality would not impair the ability of the College to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

Supportive measures will be offered to the Complainant within five (5) business days of receipt of the complaint.

Supportive measures will be offered to the Respondent simultaneously with the Notice of Allegations.

#### D. STANDARD OF EVIDENCE FOR DETERMINING RESPONSIBILITY

For the purposes of the College's Title IX procedures, the College will use a "preponderance of evidence" standard for determining responsibility. Preponderance of the Evidence means evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is evidence which as a whole shows that the fact sought to be proved is more probable than not.

#### E. FORMAL COMPLAINT PROCESS

A formal complaint must be submitted in electronic (email) or written format to the Title IX Coordinator and must be signed by the Complainant. In the event that under the circumstances a formal complaint should be pursued notwithstanding a Complainant's desire not to file a formal complaint, the Title IX Coordinator may sign the complaint. The complaint must include the following:

- the date of the original complaint,
- names of Complainant and Respondent,
- facts and description of the complaint, and
- the request to investigate complaint.

A Complainant must be participating in or attempting to participate in a College sponsored program or activity at the time the complaint is filed.

#### F. DIMISSAL OF FORMAL COMPLAINT

The College may dismiss a formal complaint or allegations therein if:

- the Complainant informs the Title IX Coordinator in writing that the Complainant desires to withdraw the formal complaint or allegations therein,
- the Respondent is no longer enrolled or employed by the school, or
- specific circumstances prevent the school from gathering sufficient evidence to reach a determination.

The College must dismiss a formal complaint or allegations therein if:

- the allegations do not meet the definitions of sexual harassment
- the alleged conduct did not occur within the United States, or

- the alleged conduct did not occur within a College sponsored program or activity.

If the College determines the formal complaint or allegations therein will be dismissed, the Title IX Coordinator will provide written notice to both parties of the dismissal of allegations, and the reason for dismissal within five (5) business days of the decision to dismiss the complaint and the Complainant's right to Appeal, if applicable.

## G. NOTICE OF ALLEGATIONS

The Title IX Coordinator will provide simultaneous written notice of allegations, including sufficient details, and intent to investigate to the Complainant and Respondent no later than ten (10) calendar days after receipt of the formal complaint. The Title IX Coordinator will also provide both parties with the formal complaint, grievance and appeal process, possible sanctions and remedies, and availability of advisors. The written notice shall include a statement that the respondent is presumed not responsible for the alleged conduct, that the parties and their advisors may review and inspect evidence, and advise the parties of the provisions of the College Code of Conduct relating to making false statements or submitting false information during the grievance process.

The Title IX Coordinator will additionally notify the Title IX investigator of the pending investigation and provide a copy of the formal complaint.

## H. ADVISORS

In addition to providing the Complainant and Respondent with written notice of allegations and intent to investigate, the Title IX Coordinator will inform the parties that they may each obtain one designated personal advisor, who may be selected by the party or, in the alternative, appointed by the College.

Complainants and Respondents may be accompanied by an advisor of their choice throughout the investigation. An advisor's role is limited to assisting, advising, and/ or supporting a Complainant or Respondent. An advisor is not permitted to speak for or on behalf of a Complainant or Respondent or appear in lieu of a Complainant or Respondent.

Party-Designated Advisor: : Both parties shall have the right to designate one advisor. This party-designated advisor can be legal counsel or other type of representative (i.e., pastor, family member, AEA Representative, friend) and shall be retained at the respective party's own cost. Parties may also choose to have one designated support person.



College-Designated Advisor: In the event that either party does not or cannot designate their own advisor, that party shall have the right to request one advisor to be provided by the College by making a request in writing to the Title IX Coordinator and declaring that the party has not selected another advisor. An advisor will be appointed for the party at the discretion of the College. Once requested, a party may not dismiss a College-designated advisor unless that party elects to retain legal counsel. A College-designated advisor will be released by the College if a party subsequently designates legal counsel as its advisor.

## I. INVESTIGATION PROCEDURE

The Title IX investigator is responsible for conducting an investigation of the submitted formal complaint. The Title IX investigator will have received Title IX investigator training within the current academic year.

The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the College and not on the parties.

The Title IX investigator will notify the Complaint and Respondent in writing of the intent to investigate within five (5) business days of receipt of the formal complaint and will commence interviews within ten (10) business days of receipt of the formal complaint. The Title IX investigator will notify the Complainant and Respondent and their respective advisors in writing of all individuals the investigator intends to interview.

Either party may identify other witnesses with relevant information for interview or other evidence for review by the investigator.

The Title IX investigator will conduct a factual investigation of the formal complaint and shall research applicable statutes, regulations, and/or policies, if any. The Title IX investigator will notify any interviewees in writing of the intent to interview. Interviewees will have at least five (5) business days' notice of an interview. Notice will include the participants, date, place, purpose, and time of the interview.

The College will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory (tending to establish fault or guilt) and exculpatory (clearing or tending to clear from alleged fault or guilt) evidence. Creditability determinations may not be based on a person's status as a complainant, respondent or witness.

The College will provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or

grievance proceeding; however, the College may establish restrictions regarding the extent to which the advisor may participate in proceedings, as long as the restrictions apply equally to both parties.

The College will provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the College does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.

The College will make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal access opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

Prior to the completion of the investigative report, the Title IX investigator will submit all reviewed evidence to the Title IX Coordinator.

The Title IX Coordinator will provide copies of all evidence reviewed during the investigation to the Complainant, Respondent, and their respective advisors. All parties will have ten (10) business days to review the evidence and respond in writing to the Title IX Coordinator.

Subsequent to the ten (10) business day review period, the Title IX Coordinator will direct any responses from the Complainant, Respondent, or their respective advisors to the Title IX Investigator for additional review. The Title IX Investigator will submit a final report and the reviewed evidence to the Title IX Coordinator. At least 10 days prior to the live hearing, the Title IX Coordinator will simultaneously provide the Complainant, Respondent, their respective advisors, with the final report and all reviewed evidence for their review and written response. The President will select a Hearing Officer to conduct the live hearing. The Hearing Officer shall be provided a copy of the investigative report and reviewed evidence.

## J. LIVE HEARING PROCEDURE

Upon completion of the final investigative report, the Hearing Decision Maker will schedule a live hearing. The Hearing Decision Maker will have completed Decision Maker training during the current academic year. If there are multiple Hearing Decision Maker, one shall be designated as the Primary Decision Maker. The Hearing Decision Maker will notify the Complainant, Respondent, their respective advisors, Title IX Coordinator, Title IX Investigator, and witnesses named in the final report of the live hearing date. The live hearing date must provide the Complainant, Respondent, and their respective advisors with no less than ten (10) business days to review the final investigative report and all supporting evidence.

Each party must have an advisor present at the hearing. The advisor's role is limited to supporting, advising, and assisting the party during the hearing and conducting questioning (cross-examination) of participants. Advisors are required to follow rules of decorum enforced by the decision-maker. Failure to follow the rules of decorum by an advisor may result in removal of an advisor from the hearing. If a party does not have an advisor present at the live hearing, the College will appoint the party with an advisor without fee or charge.

The hearing must be a live, recorded hearing with the opportunity for both advisors to conduct cross-examinations. The hearing shall be recorded by either a court reporter or on audio or video tape or by other electronic recording medium. In addition, all items offered into evidence by the parties, whether admitted into evidence or not, shall be marked and preserved as part of the hearing record.

Upon request, the Complainant and Respondent may participate in the hearing via on-campus video conferencing provided that all parties, including the Decision Maker, are able to see and hear the party or witness answering questions in real-time.

The Hearing Decision Maker, Complainant, Respondent, and their respective advisors will attend the hearing. The Title IX investigator, Title IX Coordinator and witnesses will be called to provide testimony if requested by the Hearing Decision Maker(s), parties or their respective advisors.

If a party does not have an advisor present at the live hearing, the College shall provide without fee or charge to that party, an advisor of the College's choice, who may be, but is not required to be an attorney. Neither party may dismiss a College appointed advisor.

The hearing process will consist of:

- Opening statement by Hearing Decision Maker
- Review of hearing procedures, formal complaint and notice of allegations by Hearing Decision Maker
- Review of potential hearing outcomes and sanctions by Hearing Decision Maker
- Complainant Testimony
- Cross-examination of Complainant by Respondent advisor
- Testimony of Witnesses of Complainant
- Cross-examination of Complainant Witnesses by Respondent advisor
- Respondent Testimony
- Cross-examination of Respondent by Complainant advisor
- Witnesses of Respondent Testimonies
- Cross-examination of Respondent Witnesses by Complainant advisor
- Decision Maker inquiries

- Review of appeal process by Hearing Decision Maker
- Closing statement by Hearing Decision Maker
- Dismissal of parties
- Decision Maker deliberations

At the hearing, the Hearing Decision Maker shall read the hearing procedures, notice of allegations, formal complaint, potential hearing outcomes, and potential sanctions. After the Hearing Decision Maker concludes opening statements, the Complainant shall have the opportunity to present such oral testimony and offer such other supporting evidence as deemed relevant to the formal complaint. Subsequent to Complainant testimony, the Respondent advisor may conduct cross-examination. The Decision Maker may question the Complainant after the cross-examination.

The Complainant may call witnesses to provide testimony as deemed appropriate to the formal complaint. The Respondent advisor may conduct cross-examination of the witnesses. The Decision Maker may question the witnesses after the cross-examination.

The Respondent shall then be given the opportunity to present such testimony and offer such other evidence as deemed relevant to the Respondent's defense against the formal complaint. Subsequent to Respondent testimony, the Complainant advisor may conduct cross-examination. The Decision Maker may question the Respondent after the cross-examination.

The Respondent may call witnesses to provide testimony as deemed appropriate to the formal complaint. The Complainant advisor may conduct cross-examination of the witnesses. The Decision Maker may question the witnesses after the cross-examination.

Only relevant cross-examination and other questions may be asked of a party or witness.

During cross-examination, the advisor will pose each question orally to the Hearing Decision Maker. The Hearing Decision Maker will determine if the Complainant, Respondent, or witnesses may respond to the question. If the Hearing Decision Maker determines that the question is not relevant, the Hearing Decision Maker will explain the rationale for dismissing the question. Rape shield protection is provided for Complainants which deems irrelevant questions and evidence about a Complainant's prior sexual behavior unless offered to prove that someone other than the Respondent committed the alleged misconduct or if the questions and evidence concern specific incidents of Complainant's prior sexual behavior with respect to the Respondent and offered to prove consent.

If a witness or party is not available or otherwise refuses to attend the hearing or attends but declines cross-examination, the statements of that witness or party, whether given during the investigation or the hearing may be considered by the Hearing Decision Maker in reaching a determination regarding responsibility. The Hearing Decision Maker shall not draw an inference about the determination

regarding responsibility based solely on a party or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

Upon conclusion of the presentation of the evidence and cross-examinations, the Hearing Decision Maker shall read the appeal process and closing statements. The Complainant, Respondent, their respective advisors and all witnesses shall be dismissed.

The Hearing Decision Maker will deliberate to determine if the Respondent is deemed responsible and submit a written hearing report which contains:

- identification of the allegations potentially constituting sexual harassment;
- a description of the procedural steps taken from the receipt of the formal complaint through determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- findings of fact supporting the determination;
- conclusions regarding the application of the College's code of conduct to the facts;
- a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the College imposes on the respondent, and whether remedies designed to restore or preserve equal access to the College's education program or activity will be provided by the College to the complainant; and
- the College's procedures and permissible bases for the complainant and respondent to appeal.

The Hearing Decision Maker will submit the hearing report to the Title IX Coordinator within ten (10) business days of the live hearing.

The Title IX Coordinator will submit the hearing report simultaneously to the Complainant, Respondent, and their respective advisors within three (3) business days of receipt of the hearing report.

The College must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the College 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.

The Title IX Coordinator will retain the recording of the hearing, the hearing report, the investigative report, and all evidence obtained during the investigation and all evidence offered at the hearing.

## K. APPEAL PROCEDURE

Appeals of a determination regarding responsibility and from the College's

dismissal of a formal complaint or any allegations therein are available to both parties on the following grounds: (1) procedural irregularity that affected the outcome of the matter; (2) new evidence that was not reasonably available at the time the decision regarding responsibility or dismissal was made, that could affect the outcome; and/or (3) the Title IX Coordinator, Investigator, or a Decision Maker had a conflict of interest or bias that affected the outcome.

The President of Marion Military Institute or his/her designee shall be the appeal authority in upholding, rejecting, or modifying the recommendations of the Hearing Decision Maker. The President or his/her designee shall not be bound in any manner by the recommendation(s) of the Hearing Decision Maker, but shall take it (them) into consideration in rendering his/her decision.

Either party may file a written request with the President requesting that the President (or his/her designee) review the decision of the Hearing Decision Maker. The written request must be filed within ten (10) business days following the party's receipt of the hearing report. If the appeal is not filed by the close of business on the tenth (10<sup>th</sup>) business day following the party's receipt of the report, the party's opportunity to appeal shall have been waived.

As to all appeals, the College will:

- notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
- ensure that the decision-maker for the appeal is not the same person as the decision-maker that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.
- ensure the decision-maker(s) for the appeal complies with the standards set for in this policy;
- give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- issue a written decision describing the result of the appeal and the rationale for the result; and
- provide the written decision simultaneously to both parties.

A decision on a party's appeal shall be rendered within 30 calendar days of the initiation of the appeals process. The time for decision may be extended for exigent circumstance or as may be otherwise agreed by the parties.

If the Complainant is also an employee of the College, the individual may also file a claim with the Equal Employment Opportunity Commission within 180 days of the alleged discriminatory act.

Informal Resolution. The College may 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 formal complaints of sexual harassment consistent with this section. Similarly, the College may not require the parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility the College may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the College does the following:

- (i) provides to the parties a written notice disclosing: the allegations, 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 formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
- (ii) obtains the parties' voluntary, written consent to the informal resolution process; and
- (iii) does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

#### L. RETALIATION PROHIBITED

Neither the College nor other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated in any manner an investigation, proceeding, or hearing conducted under this policy. Complaints alleging retaliation may be filed according to the grievance procedures included in the formal complaint process. The College shall keep confidential the identity of any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness except as may be permitted by FERPA statute, 20 U.S.C. 1232g or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

- M. Range of Possible Sanctions – On final determination of responsibility the following sanctions may be imposed against a respondent:

For Students:

Category III Offenses – Commandant Adjudicated. These offenses are considered extremely serious and will generally warrant dismissal consideration.

- i. Assault (of a sexual nature or otherwise)
- ii. Breaking into another cadet's room
- iii. Harassment (of a sexual nature, stalking, or otherwise)
- iv. Hazing (or failure to report such)
- v. Possession of drug paraphernalia including synthetic urine
- vi. Possession of firearms, weapons, or explosives
- vii. Use of racial slurs including drawings and gestures
- viii. Use, possession, or sale of illegal drugs or controlled substances
- ix. Use, possession, or sale of an intoxicant
- x. Vandalism/theft of school property. Will also include a fine of at least the cost of replacing/repairing the damage, to include labor.
- xi. Theft of personal or public property
- xii. Pattern of misconduct (4 or more Delinquency Orders)
- xiii. Honor Code Violations

Category III penalties for infractions will include a delinquency order plus any of the following as deemed appropriate:

- 1. Counseling
- 2. Reduction in rank
- 3. Penalty Hours (10-20 PH) \*\*
- 4. Restriction to campus
- 5. Referral to local law enforcement authorities
- 6. Dismissal or expulsion
- 7. Any combination of the above

For Employees:

Employees who are found in violation of this policy shall be disciplined as deemed appropriate by the investigating authority and College President, to include suspension or possible termination.

For Individuals other than employees or student:

- 1. A no trespass order may be issued for individuals who have been accused of and/or found in violation of sexual harassment.
- 2. A no contact order may be issued for individuals who have been accused of and/or found in violation of sexual harassment.

At any time in the grievance process the College may impose a temporary delay or limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness, concurrent law enforcement activity, or the need for language assistance or accommodation of disabilities.



Neither the College assigned Investigator or Decision Maker and any person who facilitates an informal resolution process shall require, rely upon, or otherwise use questions or evidence that constitute or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

The College's Title IX Coordinators, Investigators, Decision Maker shall all have received training for their respective roles prior to participating in a Title IX Complaint or grievance process. All materials used to train the Title IX Coordinators, Investigators, Decision Maker and any person who facilitates an informal resolution process may be found on the College's website at [www.marionmilitary.edu](http://www.marionmilitary.edu).

## Appendix

### Applicable Federal Uniform Crime Report Definitions

**Forcible Rape:** The carnal knowledge of a person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity.

**Forcible Sodomy:** Oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

**Sexual Assault with an Object:** —To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

**Fondling** is referred to as Forcible Fondling in the UCR.

**Incest** is a Nonforcible Offense in the UCR.

**Statutory Rape** is a Nonforcible Offense in the UCR.

### Applicable Alabama Law Definitions

**Sexual Assault** Alabama law includes definitions of the following in its sexual offenses category: rape, sodomy, sexual misconduct, sexual torture, sexual abuse, indecent exposure, enticing a child to enter vehicle, house, etc. for immoral purposes, sexual abuse of a child less than 12 years old. The following are definitions that apply to the Alabama sexual offense statutes (some of which are set forth below):

**Sexual Intercourse.** Such term has its ordinary meaning and occurs upon any penetration, however slight; emission is not required.

**Sexual Contact.** Any touching of the sexual or other intimate parts of a person done for the purpose of gratifying the sexual desire of either party. The term does not require skin to skin contact.

**Mentally Defective.** Such term means that a person suffers from a mental disease or defect which renders him incapable of appraising the nature of his conduct.

**Incapacitated.** The term includes any of the following:

- a. A person who suffers from a mental or developmental disease or disability which renders the person incapable of appraising the nature of his or her conduct.

- b. A person is temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or intoxicating substance and the condition was known or should have been reasonably known to the offender.
- c. A person who is unable to give consent or who is unable to communicate an unwillingness to an act because the person is unconscious, asleep, or is otherwise physically limited or unable to communicate.

**Forcible Compulsion.** Use or threatened use, whether express or implied, of physical force, violence, confinement, restraint, physical injury, or death to the threatened person or to another person. Factors to be considered in determining an implied threat include, but are not limited to, the respective ages and sizes of the victim and the accused; the respective mental and physical conditions of the victim and the accused; the atmosphere and physical setting in which the incident was alleged to have taken place; the extent to which the accused may have been in a position of authority; domination, or custodial control over the victim; or whether the victim was under duress. Forcible compulsion does not require proof of resistance by the victim.

**First Degree Rape – Ala. Code § 13A-6-61**

- a. A person commits the crime of rape in the first degree if he or she does any of the following:
  - 1. Engages in sexual intercourse with another person by forcible compulsion.
  - 2. Engages in sexual intercourse with another person who is incapable of consent by reason of being incapacitated.
  - 3. Being 16 years or older, engages in sexual intercourse with another person who is less than 12 years old.

**Second Degree Rape – Ala. Code § 13A-6-62** A person commits the crime of rape in the second degree if being 16 years old or older, he or she engages in sexual intercourse with another person who is 12 years old or older, but less than 16 years old; provided, however, the actor is at least two years older than the other person.

**Statutory Rape** -In Alabama, it is illegal for an adult (someone 18 or older) to have sex with a minor (someone younger than 16), even if the sex is consensual. See AL definition of consent.

**First Degree Sexual Abuse – Ala. Code § 13A-6-66**

- a. A person commits the crime of sexual abuse in the first degree if he or she does any of the following:
  - 1. Subjects another person to sexual contact by forcible compulsion.
  - 2. Subjects another person to sexual contact who is incapable of consent by reason of being incapacitated.

### **Second Degree Sexual Abuse – Ala. Code § 13A-6-67**

- a. A person commits the crime of sexual abuse in the second degree if he or she does any of the following:
  1. Subjects another person to sexual contact who is incapable of consent by reason of some factor other than being less than 16 years old.
  2. Being 19 years old or older, subjects another person to sexual contact who is less than 16 years old, but more than 12 years old.

**Sodomy.** Any sexual act involving the genitals of one person and the mouth or anus of another person. Ala. Code §13A-6-61.

### **First Degree Sodomy – Ala. Code § 13A-6-63**

- a. A person commits the crime of sodomy in the first degree if he or she does any of the following:
  1. Engages in sodomy with another person by forcible compulsion.
  2. Engages in sodomy with a person who is incapable of consent by reason of being incapacitated.
  3. Being 16 years old or older, engages in deviate sexual intercourse with a person who is less than 12 years old.

**Second Degree Sodomy – Ala. Code § 13A-6-64.** A person commits the crime of sodomy in the second degree if:

- being 16 years old or older, he or she engages in sodomy with another person 12 years old or older, but less than 1 years old; provided however, the actor is at least two years older than the other person.

### **Sexual Torture – Ala. Code § 13A-6-65.1**

- a. A person commits the crime of sexual torture if he or she does any of the following:
  1. Penetrates the vagina or anus or mouth of another person with an inanimate object by forcible compulsion with the intent to sexually torture, sexually abuse, or to gratify the sexual desire of either party.
  2. Penetrates the vagina or anus or mouth of a person who is incapable of consent by reason of being incapacitated, with an inanimate object, with the intent to sexually torture sexually abuse, or to gratify the sexual desire of either party.
  3. Penetrates the vagina or anus or mouth of a person who is less than 12 years old with an inanimate object, by a person who is 16 years old or older with the intent to sexually torture, sexually abuse, or to gratify the sexual desire of either party.
  4. By inflicting physical injury, including, but not limited to, burning, crushing, wounding, mutilating, or assaulting the sex organs or intimate parts of another person, with the intent to sexually torture, sexually abuse, or to gratify the sexual desire of either party.

**Indecent Exposure** – Ala. Code § 13A-6-68

- a. A person commits the crime of indecent exposure if, with intent to arouse or gratify sexual desire of himself or herself, or of any person other than his or her spouse, he or she exposes his or her genitals under circumstances in which he or she knows the conduct is likely to cause affront or alarm.

**Enticing Child to Enter Vehicle, House, Etc. for Immoral Purposes** – Ala. Code § 13A-6-69

- a. It shall be unlawful for any person with lascivious intent to entice, allure, persuade, or invite, or attempt to entice, allure, persuade, or invite, any child under 16 years of age to enter any vehicle, room, house, office, or other place for the purpose of proposing to such child the performance of an act of sexual intercourse or an act which constitutes the offense of sodomy or for the purpose of proposing the fondling or feeling of the sexual or genital parts of such child or the breast of such child, or for the purpose of committing an aggravated assault on such child, or for the purpose of proposing that such child fondle or feel the sexual or genital parts of such person.

**Sexual Abuse of a Child Less than 12 Years Old** – Ala. Code § 13A-6-69.1

- a. A person commits the crime of sexual abuse of a child less than 12 years old if he or she, being 16 years old or older, subjects another person who is less than 12 years old to sexual contact.

**School Employee Having Sexual Contact With a Student Under the Age of 19 Years** - Ala. Code § 13A-6-82

- a. A person commits the crime of a school employee having sexual contact with a student under the age of 19 years if he or she is a school employee and engaging in sexual contact, as defined by Section 13A-6-60, with a student, regardless of whether the student is male or female. Consent is not a defense to a charge under this section. The crime of a school employee having sexual contact with a student is a Class C felony.
- b. A person commits the crime of a school employee soliciting a sex act with a student under the age of 19 years if he or she is a school employee and solicits, persuades, encourages, harasses, or entices a student to engage in a sex act including, but not limited to, sexual intercourse, sodomy, or sexual contact, as defined by Section 13A-6-60. The crime of soliciting a student to perform a sex act is a Class A misdemeanor.

**Domestic/Dating Violence**

**First Degree Domestic Violence** – Ala. Code § 13A-6-130(a)

A person commits the crime of domestic violence in the first degree if the person commits the crime of assault in the first degree pursuant to Section 13A-6-20 or aggravated stalking pursuant to Section 13A-6-91, or burglary in the first degree

pursuant to Section 13A-7-5 and the victim is a current or former spouse, parent, step-parent, child, step-child any person with whom the defendant has a child in common, a present household member, or a person who has or had a dating relationship with the defendant.

### **Second Degree Domestic Violence – Ala. Code § 13A-6-131(a)**

A person commits the crime of domestic violence in the second degree if the person commits the crime of assault in the second degree pursuant to Section 13A-6-21; the crime of intimidating a witness pursuant to Section 13A-10-123; the crime of stalking pursuant to Section 13A-6-90; the crime of burglary in the second or third degree pursuant to Sections 13A-7-6 and 13A-7-7; or the crime of criminal mischief in the first degree pursuant to Section 13A-7-21 and the victim is a current or former spouse, parent, child, any person with whom the defendant has a child in common, a present or former household member, or a person who has or had a dating or engagement relationship with the defendant.

### **Third Degree Domestic Violence – Ala. Code § 13A-6-132(a)**

A person commits domestic violence in the third degree if the person commits the crime of assault in the third degree pursuant to Section 13A-6-22; the crime of menacing pursuant to Section 13A-6-23; the crime of reckless endangerment pursuant to Section 13A-6-24; the crime of criminal coercion pursuant to Section 13A-6-25; the crime of harassment pursuant to subsection (a) of Section 13A-11-8; the crime of criminal surveillance pursuant to Section 13A-11-32; the crime of harassing communications pursuant to subsection (b) of Section 13A-11-8; the crime of criminal trespass in the third degree pursuant to Section 13A-7-4; the crime of criminal mischief in the second or third degree pursuant to Sections 13A-7-22 and 13A-7-23; or the crime of arson in the third degree pursuant to Section 13A-7-43; and the Complainant is a current or former spouse, parent, child, any person with whom the defendant has a child in common, a present or former household member, or a person who has or had a dating relationship.

## **Stalking**

### **First Degree Stalking – Ala. Code § 13A-6-90(a)**

A person who intentionally and repeatedly follows or harasses another person and who makes a threat, either expressed or implied, with the intent to place that person in reasonable fear of death or serious bodily harm is guilty of the crime of stalking in the first degree.

### **Second Degree Stalking – Ala. Code § 13A-6-90.1(a)**

A person who, acting with an improper purpose, intentionally and repeatedly follows, harasses, telephones, or initiates communication, verbally, electronically, or otherwise, with another person, any member of the other person's immediate family, or any third party with whom the other person is acquainted, and causes material harm to the mental or emotional health of the other person, or causes such person

to reasonably fear that his or her employment, business, or career is threatened, and the perpetrator was previously informed to cease that conduct is guilty of the crime of stalking in the second degree.