

and the students accept responsibility toward each other within this community.

Sexual misconduct, including sexual harassment, violates the sacredness of the human body and spirit and will not be tolerated within our community. Campus sanctions, up to and including expulsion, may result from a responsible finding determined through the Sexual Harassment Process. Sexual misconduct, including sexual harassment, is considered one of the most serious violations of the Community Standards of Merrimack College.

In order to address incidents of sexual misconduct that do not fall within the definition of Title IX Sexual Harassment, the College has two policies that address sexual misconduct: the Title IX Sexual Harassment Policy and the Sexual Misconduct, Relationship Violence and Stalking Policy ([http://catalog.merrimack.edu/content.php?catoid=5&navoid=99#Sexual\\_Misconduct](http://catalog.merrimack.edu/content.php?catoid=5&navoid=99#Sexual_Misconduct)). These policies are interrelated and must be read together.

The Sexual Misconduct Policy applies only to certain conduct, as defined under that policy. Specifically, the Sexual Misconduct





Supportive Measures: Non-disciplinary, non-punitive individualized services, offered as appropriate, as reasonably available, and without fee or charge to either the Reporting Party or the Responding Party before or after the filing of a formal complaint or where no formal complaint has been filed. Supportive measures are designed to restore or preserve equal access to tKH & ROOHJH¶V HGXFDWLRQDO SURJUDPV RU DFWLYLWLHV unreasonably burden the other party. Supportive measures may include but not limited to: counseling; academic accommodations, such as extensions of deadlines or other related adjustments; course changes or drops; modifications of work or class schedules; campus escort services; mutual restrictions on contact between the parties; residential accommodations, including but not limited to arranging for new housing, or providing temporary housing options, as appropriate; changes in work locations; leaves of absence; increased security and monitoring of certain areas of the campus; and no trespass notices, among others. Factors to be considered in determining reasonable supportive measure may include the following:

- the specific need expressed by the party;
- the severity and/or pervasiveness of the allegations;
- any continuing effects on the party;
- whether the parties share the same residence hall, dining hall, class, extracurricular activities, transportation and/or job location; and
- whether other judicial measures have been taken to protect a party or the parties.

This policy addresses Title IX Sexual Harassment, which encompasses all of the prohibited conduct described below that occurs on the basis of sex and meets all of the following requirements:

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## Rape

- ” Any sexual penetration (anal, oral or vaginal), however slight, with any object or sexual intercourse by a person upon another person without effective consent, by force or by threat of bodily injury. Sexual penetration includes vaginal or anal penetration by a penis, object, tongue or finger and oral copulation by mouth to genital contact or genital to mouthcontact.

## Sexual Assault

- ” Any intentional sexual touching, however slight, with any object by a person upon another person without effective consent. Sexual touching includes any bodily contact with the breasts, groin, genitals, mouth or other bodily orifices of another or any other bodily contact in a sexual manner.

In Massachusetts, domestic violence is defined as abuse, assault, or threats against one or more of the following:

- ” A spouse or former spouse
- ” A dating partner or a former dating partner
- ” Someone you live with or have lived with
- ” A relative by blood or marriage
- ” The parent of your child
- ” A person with whom you have or have had a substantial relationship

Abuse is defined by actual or attempted physical abuse, psychological harm, placing another in fear of serious physical harm, causing another to engage in sexual relations by force, and/or threat of force or duress. Confidential counseling, support and referral services are available through the Hamel Health and Counseling Center. Students can also seek information and help through the National Domestic Violence Hotline at 800-799-SAFE (7233) or [www.thehotline.org](http://www.thehotline.org)

### Stalking

- ” Stalking is defined as any behavior or pattern of behavior occurring on more than one occasion that instills fear in one or more other people and/or threatens their safety, mental or physical health. Such behaviors or activities may include, but are not limited to, non consensual communication (face to face, telephone, email, texting, and social media), threatening or obscene gestures, surveillance, pursuit, following, visits to an

### Effective Consent

Effective consent is defined as informed, freely and actively given mutually understandable words or actions which indicate a willingness to participate in a form of sexual activity. Consent is mutually understandable when a reasonable person would consider the words or actions of the parties to have demonstrated agreement between them to participate in the sexual activity. In the absence of mutually understandable words or actions, neither party should assume that it is permissible to engage in the sexual activity. Consent to some form(s) of sexual activity does not necessarily mean consent to other forms of sexual activity. Consent to sexual activity may be withdrawn at any time at which point all sexual activity for which consent has been withdrawn must cease.

Consent can NEVER be given by the following:

- ” Minors (in Massachusetts, those not yet sixteen (16) years of age);
- ” Mentally disabled persons;
- ” Individuals who are incapacitated as a result of alcohol or other drug consumption (voluntary or involuntary);
- ” Individuals who are unconscious, unaware or otherwise physically helpless;
- ” Individuals who are forced, coerced, intimidated or threatened.

### Retaliation Under this Policy

No individual may intimidate, threaten, coerce, or discriminate against any individual for the

has made a report or formal complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy.

Retaliation allegations may be consolidated with other forms of prohibited conduct under this

impact both parties. The College may be limited in certain situations when student or employee privacy issues prevent disclosures.

3. Discussion of Policy. The Title IX Coordinator will explain the Title IX Policy and the different options and protections available to the parties. The Title IX Coordinator will also explain the right to report and the right to delay or decline to report the matter to the College. The parties may choose to report such conduct to local law enforcement if the conduct is potentially criminal in nature. The College has an obligation to potentially investigate the matter, but it may briefly delay the timing of the investigation if a law enforcement agency requests that the College delay its process for a reasonable amount of time to allow it to gather evidence of criminal conduct. The College will typically not consider a criminal proceeding on the same facts in its process because the College does not use the same process or standard of proof as a criminal process. Typically, the College will only inquire about criminal processes if they impact concurrent criminal proceeding, by itself, lead to an adverse inference against the Responding Party.
4. Formal Complaint. The Title IX Coordinator will also discuss the next steps in terms of formal reporting. If the Reporting Party wishes to move forward with a Formal Complaint under this Policy, the Reporting Party must provide a statement in writing. If, at this time, the Reporting Party requests that the process not move forward or move forward under a different policy, the College will weigh that request against the obligation to address any risk of harm to the reporting party or other individuals in the community given the nature of the incident. The College reserves the right to move forward with a Formal Complaint process unilaterally by signing a complaint or statement of allegations against another party. This will be utilized in limited circumstances in which the College has a concern related to the safety of the broader community.







with other appropriate College administrators. Either party may withdraw from the informal resolution process at any time. The informal resolution process will be conducted in accordance with procedures specified by the Title IX Coordinator, as determined in his/her sole discretion. The College will not allow informal processes to be used when the allegations involve an employee allegedly violating the Policy with regard to a student.

C. Investigative Report and Determination of Responsibility by Determination Hearing

1. Content of the Investigative Report. At the conclusion of the Investigation Phase, the Investigator(s) will prepare an Investigative Report which should include a summary of the factual information presented during the Investigation Phase and a separate section where the Investigator(s) point out relevant consistencies or inconsistencies (if any) between all sources of information. The Investigator(s) may also provide an optional and separate section describing the assessment of the credibility of parties and witnesses.

case law. In either case, the Investigator(s) reserves the right to redact certain information in the response or the Investigative Report to ensure that both parties are provided a fair process in compliance with federal guidance and law applicable at the time of the hearing. If further investigation is conducted, the Investigator(s) will include any additional relevant information in the Investigative Report.

- b. The Investigative Report will then be submitted to the Title IX Coordinator. Any submissions made by either party pursuant to this section, as well as any other documentation deemed relevant by the Investigator(s), will be attached to the Investigative Report.

Advisors may be, but are not required to be, attorneys. If a party does not have an advisor of their choice present at a hearing, the College will, without fee or charge, provide an advisor to the party. No later than (10) calendar days before the hearing, parties should inform the Title IX Coordinator of the identity of the advisor who will accompany them to the hearing, so that the College will know whether or not it needs to arrange for the presence of a College-provided advisor.

- c. At a time and manner deemed appropriate by the Determination Officer(s), the advisor for each party will be permitted to ask the other party and any witnesses all relevant cross-examination questions and follow-up questions, including those challenging credibility. Except for that limited role, advisors may not participate actively in the hearing and may not speak or otherwise communicate on the part of the party that the advisor is advising. However, the advisor may consult privately in a non-disruptive manner with their advisee during and/or at a recess in the hearing. Scheduling accommodations generally will not be made for advisors if they delay the process. The College reserves the right to take appropriate action regarding any advisor who disrupts the process, or who does not abide by the restrictions on their participation as determined in the sole discretion of the hearing officer, which may include exclusion of the advisor from the hearing and the appointment of an alternate College-provided advisor.
- d. 4 X H V W L R Q V D Q G H Y L G H Q F H D E R X W W K H 5 H S R U W L  
prior sexual behavior atypically

- g. If a party or witness does not submit to examination at the live hearing, the Determination Officer will consider whether and how to weigh the information provided by that party or that witness in reaching a determination regarding responsibility. The Determination Officer will strive to conform with current federal guidance or controlling case law applicable at the time of the hearing in making this evidentiary decision.
- h. If the Determination Officer determines that a party is responsible for violating this Policy, he or she may request from the College information on prior sanctioning decisions so that the Determination Officer can apply a consistent sanction in the matter at hand.
- i. College will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review. It will

possible, but no later than three (3) calendar days after delivery of the identity of the Appellate Officer, the parties should inform the Title IX Coordinator in writing of any conflicts of interest in regard to the assigned. The Title IX Coordinator will consider the nature of the conflict and determine if different individual(s) should be assigned to review the appeal.

4. Sanctions During Appeals. Sanctions of all types may be imposed while an appeal is pending at the sole discretion of the College.
  1. Duty of Honesty. All parties and witnesses are obligated to be completely honest during the course of the entire process set forth under the Policy. Any person who knowingly makes a false statement either explicitly or by omission in connection with any part of the process may be subject to separate disciplinary action. A report made in good faith, however, is not considered false merely because the evidence does not ultimately support the allegation of a violation of the Policy.
  2. Duty of Cooperation. All parties and witnesses are obligated to cooperate with the Title IX Coordinator and any persons charged with implementing the Policy. Any person who knowingly interferes with the actions taken to implement the reporting, investigation, or resolution of matters under the Policy may be subject to separate and/or additional disciplinary action. Please note that the Duty of Cooperation will not be utilized to X Q G H U P L Q H D Q L Q G L Y L G X D O T V G H F L V L R Q Q R W W R W D N to forfeit any constitutional rights in a criminal investigation involving the same or similar facts and circumstances.
4. Special Situations.

taking appropriate action through criminal and/or Title



provide enough information for community members to make safe decisions in light of the danger.

Any victim that may have been in violation of any policy (other than the Title IX Sexual Harassment Policy or Sexual Misconduct Policy) at the time of the alleged sexual misconduct may not be subject to the College disciplinary process for these Q q 0.00000912 0 612 792 re W\* n