1.0 Introduction

Members of the Muhlenberg College community, guests and visitors have the right to be free from all forms of gender-based and sex-based discrimination, examples of which may include acts of sexual violence, sexual harassment, domestic violence, dating violence, and stalking. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. When an allegation of sexual or gender-based misconduct is reported, and a student is found to have violated this Policy, serious sanctions will be used to reasonably ensure that such actions are never repeated. This Policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This Policy is intended to define community expectations and to establish a process for determining when those expectations have not been met.

Muhlenberg College complies with Title IX of the Higher Education Amendment of 1972, which prohibits discrimination on the basis of sex in education programs or activities. Sexual and gender-based misconduct, as defined in this Policy, constitutes a form of sex discrimination prohibited by Title IX.

This Sexual and Gender-Based Misconduct Policy applies regardless of the alleged victim's or accused student's sexual orientation, sex, gender identity, gender expression, age, race, nationality, class status, ability, or religion.

Contact: Ms. Lee Kolbe, Title IX Coordinator, 484-664-3562

2.0 Overview of Policy Expectations With Respect to Sexual Misconduct

The expectations of our community regarding sexual misconduct can be summarized as follows: in order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing and voluntary consent prior to and during sexual activity. Consent is sexual permission. Consent can be given by word or action, but non-verbal consent is not as clear as talking about what you want, and don’t want, sexually. Consent to one form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Silence--without actions demonstrating permission--cannot be assumed to show consent.

Moreover, under the law, consent is not legally effective, and cannot be raised as a defense by someone accused of sexual misconduct, if the victim by reason of youth, mental disease or defect, or intoxication is manifestly unable, or known to the accused to be unable, to make a reasonable judgment as to the nature or harmfulness of the accused's conduct. Therefore, because alcohol or other drug use can place the capacity to consent to sexual activity in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (who,
what, when, where, why, or how) because they lack the capacity to reasonably understand the situation. Individuals who consent to sex must be able to understand what they are doing. Under this policy, “No” always means “No,” and “Yes” may not always mean “Yes.” Anything but a clear, knowing and voluntary consent to any sexual activity is equivalent to a “No.”

Additionally, there is a difference between seduction and coercion. Coercing someone into sexual activity violates this Policy in the same way as physically forcing someone into sex.

Please see Section 10.0 of this Policy for the definitions of certain words and more discussion regarding consent and alcohol and drug use.

3.0 Sexual and Gender-Based Misconduct Offenses
Sexual and gender-based misconduct offenses include, but are not limited to, the following:

A. Sexual Harassment
B. Non-Consensual Sexual Contact
C. Non-Consensual Sexual Intercourse
D. Sexual Exploitation
E. Retaliatory Harassment
F. Gender-Based Misconduct

A. “Sexual Harassment” is:
• an unwelcome sexual advance, request for sexual favor, verbal, non-verbal or physical conduct of a sexual nature that is,
  (a) sufficiently severe, persistent or pervasive that it,
  (b) unreasonably interferes with, denies or limits someone’s ability to participate in or benefit from the College’s educational programs and/or activities, and is
  (c) based on power differentials (quid pro quo), the creation of a hostile environment, or retaliation.
• Sexually-based stalking and/or bullying.

B. "Non-Consensual Sexual Contact" is:
• any intentional sexual contact,
• however slight,
• with any body part or object,
• by a person upon a person,
• that is without consent and/or by force.

“Sexual contact” includes intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, even if not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.

C. “Non-Consensual Sexual Intercourse” is:
• any sexual intercourse,
• however slight,
• with any object,
• by a person upon a person,
• that is without consent and/or by force.

“Intercourse” includes vaginal or anal penetration by a penis, object, tongue or finger, and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.
D. “Sexual exploitation” occurs when a student takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- invasion of sexual privacy,
- prostituting another student,
- non-consensual video or audio-taping of sexual activity,
- going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex),
- engaging in voyeurism,
- knowingly exposing another student to an STI or HIV, and/or
- exposing one’s genitals in non-consensual circumstances; inducing another to expose their genitals.

Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

E. “Retaliatory Harassment” is any adverse action taken against a person because of the person’s participation in a complaint or investigation of sexual or gender-based misconduct.

F. “Gender-Based Misconduct” is behavior that constitutes a violation of the College’s Social Code or any other College policies and is sex or gender-based. Examples may include, but are not limited to, domestic violence, dating violence, and other impermissible conduct such as assault, harassment or hazing that is sex or gender-based.

4.0 Sanction Statement

Any student that is alleged to have violated this Policy will be subject to disciplinary action as set forth in the College’s Social Code and this Policy. Any student that is subsequently found to have violated this Policy will be subject to sanctions as set forth in the Social Code and this Policy. In that regard:

- Any student found responsible for violating this Policy by committing Sexual Exploitation, Sexual Harassment, Retaliatory Harassment or Gender-Based Misconduct will likely receive a recommended sanction ranging from warning to expulsion, depending on the severity of the incident, and taking into account any previous Social Code violations.

- Any student found responsible for violating this Policy by committing Non-Consensual Sexual Contact (where no intercourse has occurred) will likely receive a sanction ranging from disciplinary probation to expulsion, depending on the severity of the incident, and taking into account any previous Social Code violations.

- Any student found responsible for violating this Policy by committing Non-Consensual Sexual Intercourse will likely face a recommended sanction of suspension or expulsion.

Notwithstanding the above, the College reserves the right to broaden or lessen any range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior.

In College judicial proceedings under the Social Code, legal terms like “guilt” and “innocence” are not generally applicable, and the College never assumes a student is in violation of College policy. College judicial proceedings under the Social Code are conducted to take into account the totality of all evidence available, from all relevant sources, and charges against someone accused of violating this Policy must be established by a preponderance of the evidence.

The College reserves the right to take whatever measures it deems necessary in response to an allegation of sexual or gender-based misconduct in order to protect students’ rights and personal safety. Such measures may include, but are not limited to, modification of living arrangements and
interim suspension from campus pending a hearing. Not all forms of sexual and gender-based misconduct will be deemed to be equally serious offenses, and the College reserves the right to impose different sanctions, ranging from a verbal warning to expulsion, depending on the severity of the offense. The College will consider the concerns and rights of both the alleged victim and the person accused of sexual or gender-based misconduct.

5.0 Confidentiality, Privacy and Reporting

Different people on campus have different reporting responsibilities and different abilities to maintain confidentiality, depending on their roles at the College and College policy. Therefore, when consulting College personnel, all parties should be aware of confidentiality, privacy and mandatory reporting requirements in order to make informed choices. On campus, some individuals can offer you confidentiality, sharing options and advice without any obligation to tell anyone unless you want them to. Other individuals are expressly there for you to report crimes and policy violations and they will take action when you report your victimization to them. Other individuals on campus fall in the middle of these two extremes. Neither the College nor the law requires them to divulge private information that is shared with them except in certain circumstances, some of which are described below. A victim may seek assistance from these individuals without starting a formal process that is beyond the victim’s control or violates his or her privacy.

5.1 To Report Confidentially

If one desires that details of the incident be kept confidential, they should speak with campus Counseling Services, campus Health Services, College Chaplains, members of the Sexual Assault Resource Team (SART) or off-campus rape crisis resources who can maintain confidentiality. Campus counselors are available to help you free of charge, and can be contacted on an emergency basis. In addition, you may speak on and off-campus with members of the clergy and chaplains, who will also keep reports made to them confidential. You should note that these individuals, under certain limited circumstances, may be required under applicable law to report the incident to authorities. For example, under the Pennsylvania Child Protective Services Law, certain professionals and school personnel are required to report suspected incidents of child abuse (including sexual abuse of an individual under the age of 18) to the authorities.

- Counseling Services (484-664-3178)
- Health Services (484-664-3199)
- Chaplain (484-664-3120)
- Crime Victims Council (610-437-6611)
- Lehigh Valley Hospital (610-402-8000)
- Sacred Heart Hospital (610-776-4500)
- St. Luke’s Hospital (Allentown) (610-770-8300)

- Sexual Assault Resource Team (SART)
  - Ms. Cynthia Amaya Santiago, Admission Office (484-664-3245)
  - Dr. Francesca Coppa, English Department (484-664-3275)
  - Dr. A. Lanethea Mathews-Schultz, Political Science Department (484-664-3737)
  - Dr. Jeremy Teissere, Biology Department (484-664-3617)
  - Ms. Kimberly Stolarik, Admission Office (484-664-3202)
  - Ms. Lindsay Weiss Porembo, Athletics Department (484-664-3063)

If one desires to file an anonymous “Jane/John Doe Report,” they should contact the Department of Campus Safety at (484) 664-3110. These anonymous reports are designed to provide the victim with the opportunity to document the sex offense without necessarily leading to discipline of the offender. The information from this report will be treated as confidential provided that, if in the College’s judgment an informally reported sex offense may present a threat to members of the campus community, it may take appropriate steps to investigate and/or report the offense without revealing the identity of the victim. The College may take other steps as deemed appropriate. A
Security Alert will may be sent out to the Campus Community, with an attempt to protect the identity of the victim. See Section 5.4 below.

In addition, individuals can choose to file a confidential Report of Sexual Assault/Harassment with the College’s Counseling Services.

5.2 Non-Confidential Reporting Options
You are encouraged to speak to officials of the College to make formal reports of incidents (deans, vice presidents, or other administrative managers with supervisory responsibilities, campus security, and human resources). The College considers these people to be among the College’s “responsible employees” under Title IX and notice to them is official notice to the College. You have the right and can expect to have incidents of sexual misconduct taken seriously by the College, and to have those incidents investigated and resolved through administrative procedures when formally reported. Formal reporting means that only people who need to know will be told, and information will be shared only as necessary with investigators, witnesses, and the accused individual.

Formal College Judicial Complaint: Reported to the Dean of Students Office, Title IX Coordinator and/or the Department of Campus Safety. These reports will lead to a formal investigation and possible disciplinary action under this Policy and the Social Code.

Formal Criminal Complaint: If a victim desires to bring criminal charges against the alleged perpetrator, Campus Safety and Counseling Services will provide support and the means whereby this can be accomplished through the Allentown Police Department or the local law enforcement agency where the misconduct occurred.

Campus Safety (484-664-3110)  
Counseling Services (484-664-3178)  
Allentown Police Department (610-437-7751)

NOTE: The College system and police/legal system work independently from one another. Students can file reports with the College, with law enforcement, or with both systems. Because the standards for finding a violation of criminal law are different from the standards for finding a violation of this Policy under the College’s Social Code, criminal investigations or reports are not determinative of whether or not sexual or gender-based misconduct under this Policy has occurred.

5.3 Federal Statistical Reporting Obligations
Certain campus officials have a duty to report certain crimes including sexual assault, domestic violence, dating violence, and stalking for federal statistical reporting purposes under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”). All personally identifiable information is kept confidential, but statistical information must be passed along to Campus Safety regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the College’s annual Campus Security Report. This Report helps to provide the community with a clear picture of the extent and nature of campus crime and to ensure greater community safety. Under the Clery Act, the College’s mandated federal reporters include: Faculty, certain Adjunct Faculty, Advisors to Student Organizations, Greek Life/Leadership Staff, Campus Safety Personnel, Life Sports Center Building Monitors, Coaches/Athletic Directors, Office of Civic Engagement, Dean of Students Office, Office of Multicultural Life, Residential Services Staff, Student Activities Staff, Title IX Coordinator, Office of Admissions, Academic Resource Center Staff, Career Center Staff, Alumni Affairs Staff, Trexler Library Staff, Provost’s Office and Hillel Staff. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.
5.4 Federal Timely Warning Reporting Obligations
Victims of sexual or gender-based misconduct should also be aware that College managers must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. The College will make every effort to ensure that a victim’s name and other identifying information are not disclosed, while still providing enough information for community members to make safety decisions in light of the danger. The reporters for timely warning purposes are exactly the same as the mandated federal reporters under the Clery Act detailed at the end of the above paragraph.

5.5 The Pennsylvania Child Protective Services Law (“CPSL”)
Under the CPSL, certain adults, such as College employees and other individuals who accept responsibility for the care, supervision, guidance or control of an individual under the age of 18, are “mandatory reporters” who are required to report suspected child abuse (including sexual abuse or exploitation) if the person has reasonable cause to suspect that a child is a victim of child abuse.

6.0 Investigations and Procedures
The following procedures will be followed in connection with any alleged violations of this Policy. These procedures are in addition to the procedures set forth in the College’s Social Code. In the event of any conflict between the below procedures and the procedures set forth in the Social Code, the procedures contained in this Policy will control.

Students who believe they have been subjected to violations of this Policy should follow the procedure outlined below to report these concerns. This process involves an immediate initial investigation to determine if there is reasonable cause to believe this Policy has been violated. If so, the College will initiate a prompt, thorough and impartial investigation. This investigation is designed to provide fair and reliable evidence so that a determination can be made under the Social Code whether this Policy has been violated. If a violation is found, the College will implement a prompt and effective remedy designed to end the violation, prevent its recurrence and address its effects.

In addition, students who wish to report a concern or complaint relating to discrimination or harassment may do so by reporting the concern to the College Title IX Coordinator:

Lee Kolbe  
Title IX Coordinator  
Muhlenberg College  
2400 Chew Street  
Allentown, PA 18104  
(484) 664-3562

Individuals with complaints of this nature also always have the right to file a formal complaint with the United States Department Education:

Office for Civil Rights (OCR)  
400 Maryland Avenue, SW  
Washington, DC 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012  
TDD#: (877) 521-2172  
Email: OCR@ed.gov  
Web: http://www.ed.gov/ocr

6.1 Formal Complaint Process:  
The College Title IX Coordinator will direct a formal investigation of alleged violations of this Policy by students. Notice of a formal complaint can be made in person or orally to Campus
Safety, the Title IX Coordinator, the Office of the Dean of Students or another appropriate College official, but the College strongly encourages submission of complaints in writing to the Title IX Coordinator.

The complaint should clearly and concisely describe the alleged incident(s), when and where it occurred, and the desired remedy sought. The complaint should be signed by the person initiating the complaint and should contain the name and all contact information for the complainant/alleged victim. Any supporting documentation and evidence should be referenced within the body of the formal complaint. Additionally, the initiator of a formal complaint should submit any supporting materials in writing as quickly as is practicable.

Upon receipt of a complaint, the Title IX Coordinator will open a formal case file, direct the investigation and recommend appropriate interim actions, accommodations for the alleged victim, or other necessary remedial short-term actions.

The Title IX Coordinator will then take the following steps:

- In coordination with the Office of the Dean of Students, implement any initial necessary remedial actions.
- Determine the identity and contact information of the complainant (whether that be the initiator, the alleged victim, or a College proxy or representative).
- Identify the correct policies allegedly violated.
- Direct an immediate initial investigation to determine if there is reasonable cause to charge the accused individual, and what policy violations should be alleged as part of the complaint.

  At the discretion of the Title IX Coordinator in consultation with the Dean of Students, the investigation shall be conducted by College personnel or by an outside investigator engaged by the College.

  - If there is insufficient evidence to support reasonable cause, the Title IX Coordinator will recommend to the Student Conduct Officer that the complaint should be closed with no further action.
  - If there is sufficient evidence to support reasonable cause, the Title IX Coordinator will thereafter initiate and direct a thorough, reliable and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended timeframe, and order of interviews for all witnesses and the accused individual.

Upon completion of the investigation, the Title IX Coordinator shall consult with the Student Conduct Officer about the matter and if the Title IX Coordinator and the Student Conduct Officer agree that charges are warranted, the Student Conduct Officer, pursuant to the College’s Social Code, shall make a determination in consultation with the Dean of Students as to the proper forum for consideration of the alleged violations of this Policy.

If a hearing before a College Hearing Board is warranted, the Student Conduct Officer shall provide the student accused of violating this Policy with a copy of the Hearing Board Packet that includes the following: Notice of Charge(s), Notice of Hearing, list of intended witnesses, judicial advisor information, and a copy of the Investigation Report, including exhibit information. The Notice of Charge(s) shall include proposed sanctions for the alleged violations.

If the accused student accepts responsibility for the violations set forth in the Notice of Charge(s) and accepts the proposed sanctions, the Dean of Students will impose the proposed sanctions. In addition, the College will act to end the discrimination, prevent its recurrence, and remedy its effects on the victim and the College community.

In the event that the accused student does not accept responsibility for the violations set forth in the Notice of Charge(s) and/or does not accept the proposed sanctions, in whole or in part, the Student Conduct Office will convene a Hearing Board to determine whether the accused student is in violation of this Policy. At the hearing, the findings of the investigation will be admitted, but
are not binding on the Hearing Board, and the Title IX Coordinator and/or the personnel directed
to conduct the investigation may give evidence.

In all cases where the Notice of Charge(s) includes alleged violations of this Policy, the Hearing
Board shall consist of three members: one faculty member (who shall serve as the Hearing Board
Chair) and two College administrative managers and a quorum shall consist of all three members.
If both the accused student and the complainant/alleged victim agree, the Hearing Board shall
consist of five members: two students, one faculty member (who shall serve as the Hearing
Board Chair) and two College administrative managers and a quorum shall consist of any three
members (provided one is a faculty member, one is a College administrative manager and one is
a student).

If the accused student is found in violation of this Policy, in addition to the sanctions imposed
upon the accused student by the Dean of Students under the Social Code, the College will act to
end the discrimination, prevent its recurrence, and remedy its effects on the victim and the
College community.

6.2 Time Frame and Grounds for Filing an Appeal Request
In the event that an accused student accepts responsibility for the violations set forth in the Notice
of Charge(s) and accepts the proposed sanctions, the accused student shall have no right of
appeal. However, the complainant/alleged victim shall have the right to appeal if the
complainant/alleged victim believes that the sanctions imposed are substantially disproportionate
to the severity of the violations. If the complainant/alleged victim desires to file such an appeal,
the appeal must be submitted to the Office of the Dean of Students in writing within five days after
the complainant/alleged victim receives written notification that the accused student accepted
responsibility for the violations set forth in the Notice of Charge(s) and accepted the proposed
sanctions (provided that the Dean of Students, in his or her sole discretion, reserves the right to
grant additional time to file an appeal for good cause). Thereafter, the appeal shall proceed as
set forth in Section 17.0 of the College's Social Code and this Policy.

In the event that an accused student does not accept responsibility and a hearing takes place
under the Social Code, both the accused student and the complainant/alleged victim may appeal
the decision of the Dean of Students pursuant to Section 17.0 of the Social Code and this Policy.

If an appeal is filed, the Student Conduct Officer will share the appeal with the other party (e.g., if
the accused student appeals, the appeal is shared with the complainant/alleged victim) and the
non-appealing party shall have the opportunity to submit a written response to the Student
Conduct Officer within five days after receiving the appeal. All appeals and responses are then
forwarded by the Student Conduct Officer to the College Appeal Board(s) for review. In all cases
where the appeal includes alleged violations of this Policy, the Appeal Board shall consist of two
members: one faculty member and one College administrative manager and a quorum shall
consist of both members. If both the appealing student and the non-appealing student agree, the
Appeal Board shall consist of four members: two students, one faculty member and one College
administrative manager and a quorum shall consist of any three members (provided one is a
faculty member, one is a College administrative manager and one is a student). The appeal will
then proceed as set forth in Section 17.0 of the College's Social Code and this Policy. All parties
shall be timely informed of the status of requests for appeal, the status of the appeal
consideration, and the results of the appeal decision.

All sanctions agreed to by the accused student or imposed by the Dean of Students will be in
effect during any appeal provided that the accused student may request special consideration
from the Office of the Dean of Students in exigent circumstances. Graduation, study abroad,
internships/externships, etc. do not in and of themselves constitute exigent circumstances, and
students may not be able to participate in those activities during their appeal. In cases where the
appeal results in reinstatement to the College or of privileges, all reasonable attempts will be
made to restore the student to their prior status, recognizing that some opportunities lost may be irretrievable in the short term.

The Student Conduct Officer, in his or her sole discretion, reserves the right to grant the complainant/alleged victim and/or the accused student additional time to file an appeal or response for good cause.

6.3 Special Complaint Process Provisions

A. **College as Complainant** - As necessary, the College reserves the right to initiate a complaint, to serve as complainant, and to initiate proceedings without a formal complaint by the alleged victim of sexual or gender-based misconduct.

B. **Advisor of Choice** – All parties are entitled to an advisor of their choosing to guide and accompany them throughout the campus resolution process. The advisor may be a friend, mentor, family member, attorney or any other supporter a party chooses to advise them. However, certain individuals are disqualified from serving as advisors including any individual who may be called as a witness, College administrative managers involved in the adjudication process, any College administrative manager who supervises a participant in the adjudication process as an employee, and anyone who has been strategically chosen to deprive another party of their likely advisor, etc. The College maintains a pool of trained (non-attorney) advisors who are available to the parties. The parties may choose advisors from outside the pool, or outside the campus community, but those advisors may not have the same level of insight and training on the College process as do those trained by the College. Outside advisors are not eligible to be trained by the College. Please refer to Section 7.0 of this Policy for information regarding the role of the advisor.

C. **False Reports** – The College will not tolerate intentional false reporting of incidents. It is a violation of the College’s Social Code to make an intentionally false report of any policy violation.

D. **Immunity for Victims and Witnesses** - The College community encourages the reporting of Social Code violations, especially sexual and gender-based misconduct. Sometimes, victims or witnesses are hesitant to report to College officials or participate in grievance processes because they fear that they themselves may be charged with policy violations, such as underage drinking at the time of the incident. It is in the best interest of this community that as many victims as possible choose to report to College officials, and that witnesses come forward to share what they know. To encourage reporting, the College pursues a policy of offering victims of sexual or gender-based misconduct and witnesses limited immunity from being charged for policy violations related to the sexual or gender-based misconduct incident. While violations cannot be completely overlooked, the College will provide educational rather than punitive responses, in such cases.

E. **Bystander Engagement** - The welfare of students in our community is of paramount importance. At times, students on and off-campus may need assistance. The College encourages students to offer help and assistance to others in need. Sometimes, students are hesitant to offer assistance to others for fear that they may get themselves in trouble (for example, as student who has been drinking underage might hesitate to help take a sexual misconduct victim to the Campus Police). The College pursues a policy of limited immunity for students who offer help to others in need. Please see the College’s Medical Amnesty Policy.

F. **Notification of Outcomes** - The outcome of a campus hearing is part of the educational record of the accused individual, and is protected from release under a federal law, FERPA. However, the College observes the following legal exceptions: (i) Complainants/alleged victims in non-consensual sexual contact/intercourse incidents have an absolute right to be
informed of the outcome, essential findings, and sanctions of the hearing, in writing, without
condition or limitation. (ii) Complainants/alleged victims in sexual exploitation, sexual
harassment, stalking, relationship violence and any other sexual misconduct offense have an
absolute right to be informed of the outcome, in writing, and to be informed of any sanctions
that directly relate to them, and to essential findings supporting the outcome when the
outcome is one of violation (and the underlying offense is a crime of violence as defined 34 C.F.R. § 99.39) and/or it is equitable to share the essential findings with all parties.

G. Alternative Testimony Options and Questioning of an Alleged Victim and the Accused -
For sexual and gender-based misconduct complaints, whether the alleged victim is serving
as the complainant or as a witness, alternative testimony options will be given, such as
placing a privacy screen in the hearing room, or allowing the alleged victim to testify outside
the physical presence of the accused individual, such as by Skype. While these options are
intended to help make the alleged victim more comfortable, they are not intended to work to
the disadvantage of the accused individual. In addition, if the alleged victim or the accused
intend to ask the other questions at the hearing, the Chair of the Hearing Board will be given
the questions to ask, at his or her reasonable discretion, during the course of the hearing.
Moreover, after the initial questioning of the alleged victim and the accused is completed,
each party will be given an opportunity to pose additional follow-up questions which the Chair
of the Hearing Board shall screen and ask during the balance of the hearing to the extent that
he or she deems such questions appropriate and relevant to the case.

H. Past Sexual History/Character – Questions about the alleged victim’s sexual history with
anyone other than the accused, and questions about the accused’s sexual history with
anyone other than the alleged victim will not be admissible in the hearing under any
circumstances. The sexual history of the alleged victim and the accused will only be
admissible in the hearing if such information is determined to be highly relevant by the Chair
of the Hearing Board. All such testimony or other evidence sought to be admitted will be
presumed irrelevant. A party who wishes to overcome this presumption must, at least 24
hours prior to the scheduled hearing, submit a written request to the Student Conduct Officer
describing the past sexual history at issue and the reason(s) they believe that it is highly
relevant. The Chair of the Hearing Board shall make a determination regarding the
admissibility of such information prior to the commencement of the hearing.

6.4 Statement of the Rights of the Alleged Victim

A. The right to an investigation and appropriate resolution of all credible complaints of sexual
and gender-based misconduct made in good faith to College administrative managers.

B. The right to be treated with respect by College officials.

C. The right of both the alleged victim and accused to have the same opportunity to have others
present (in support or advisory roles), including an attorney, during a campus disciplinary
hearing.

D. The right not to be discouraged by College officials from reporting sexual or gender-based
misconduct to both on-campus and off-campus authorities.

E. The right to be informed of the outcome and sanction of any disciplinary hearing involving
sexual or gender-based misconduct.

F. The right to be informed by College officials of options to notify proper law enforcement
authorities, including on-campus and local police, and the option to be assisted by campus
authorities in notifying such authorities, if the student so chooses. This also includes the right
not to report, if this is the victim’s desire.
G. The right to be notified of available counseling, mental health or student services for victims of sexual and gender-based misconduct, both on campus and in the community.

H. The right to notification of and options for, and available assistance in, changing academic and living situations after an alleged incidents of sexual or gender-based misconduct, if so requested by the alleged victim and if such changes are reasonably available (no formal complaint, or investigation, campus or criminal, need occur before this option is available). If reasonably available, accommodations may include:
   --Change of an on-campus student’s housing to a different on-campus location;
   --Assistance from College support staff in completing the relocation;
   --Arranging to dissolve a college housing contract and pro-rating a refund;
   --Exam (paper, assignment) rescheduling;
   --Taking an incomplete in a class;
   --Transferring class sections;
   --Temporary withdrawal; and/or
   --Alternative course completion options.

I. The right not to have irrelevant prior sexual history admitted as evidence in a campus hearing.

J. The right not to have any complaint of sexual or gender-based misconduct mediated (as opposed to adjudicated).

K. If the Hearing Board determines that the accused has violated this Policy, the right to make a victim-impact statement at the campus conduct proceeding and to have that statement considered by the Dean of Students in determining sanctions.

L. The right to a campus no contact order against another student who has engaged in or threatens to engage in stalking, threatening, harassing or other improper behavior that presents a danger to the welfare of the complaining student or others.

M. The right to have complaints of sexual and gender-based misconduct responded to quickly and with sensitivity by campus law enforcement.

N. The right to appeal the findings and sanctions of the Dean of Students, in accordance with the standards for appeal established by the College.

O. The right to review all documentary evidence available regarding the complaint, subject to the privacy limitations imposed by state and federal law, at least 48 hours prior to the hearing.

P. The right to be informed of the names of all witnesses who will be called to give testimony, within 48 hours of the hearing, except in cases where a witness’ identity will not be revealed to the accused individual for compelling safety reasons (this does not include the name of the alleged victim/complainant, which will always be revealed).

Q. The right to preservation of privacy, to the extent possible and allowed by law.

R. The right to a hearing closed to the public.

S. The right to petition that any member of the Hearing Board be removed on the basis of bias.

T. The right to bring an advisor to all phases of the investigation and campus conduct proceeding.

U. The right to give testimony in a campus hearing by means other than being in the same room with the accused individual.
V. The right to ask the investigators to identify and question relevant witnesses, including expert witnesses.

W. The right to be fully informed of campus conduct rules and procedures as well as the nature and extent of all alleged violations contained within the complaint.

X. The right to have the College arrange for the presence of student, faculty and staff witnesses, and the opportunity (if desired) to ask questions, directly or indirectly through the Hearing Board Chair, of witnesses present (including the accused individual), and the right to challenge documentary evidence.

Y. The right to be present for all testimony given and evidence presented before the Hearing Board.

Z. The right to have complaints heard by Hearing Board members who have received annual sexual and gender-based misconduct training.

AA. The right to a Hearing Board comprised of representatives of both genders.

BB. The right to have College policies and procedures followed without material deviation.

CC. The right to be informed in advance of any public release of information regarding the complaint.

DD. The right not to have released to the public any personally identifiable information about the alleged victim, without his or her consent, except as required by applicable law.

6.5 Statement of the Rights of the Accused Student

A. The right to an investigation and appropriate resolution of all credible complaints of sexual misconduct made in good faith to College administrative managers against the accused individual.

B. The right to be treated with respect by College officials.

C. The right of both the alleged victim and the accused to have the same opportunity to have others present (in support or advisory roles), including an attorney, during a campus disciplinary hearing.

D. The right to be informed of and have access to campus resources for medical, counseling, and advisory services.

E. The right to be fully informed of the nature, rules and procedures of the campus conduct process and to timely written notice of all alleged violations within the complaint, including the nature of the violation and possible sanctions.

F. The right to a hearing on the complaint, including timely notice of the hearing date, and adequate time for preparation.

G. The right not to have irrelevant prior sexual history admitted as evidence in a campus hearing.

H. If the Hearing Board determines that the accused has violated this Policy, the right to make an impact statement at the campus conduct proceeding and to have that statement considered by the Dean of Students in determining sanction.
I. The right to appeal the findings and sanctions of the Dean of Students, in accordance with the standards for appeal established by the College.

J. The right to review all documentary evidence available regarding the complaint, subject to the privacy limitations imposed by state and federal law, at least 48 hours prior to the hearing.

K. The right to be informed of the names of all witnesses who will be called to give testimony, within 48 hours of the hearing, except in cases where a witness’ identity will not be revealed to the accused individual for compelling safety reasons (this does not include the name of the alleged victim/complainant, which will always be revealed).

L. The right to a hearing closed to the public.

M. The right to petition that any member of the Hearing Board be removed on the basis of bias.

N. The right to have the College arrange for the presence of student, faculty and staff witnesses, and the opportunity to ask questions, directly or indirectly through the Hearing Board Chair, of witnesses present (including the complainant), and the right to challenge documentary evidence.

O. The right to have complaints heard by Hearing Board members who have received annual sexual and gender-based misconduct adjudication training.

P. The right to have College policies and procedures followed without material deviation.

Q. The right to have an advisor to accompany and assist in the campus hearing process.

R. The right to a fundamentally fair hearing, as defined in these procedures and the College’s Social Code.

S. The right to a campus conduct outcome based solely on evidence presented during the hearing. Such evidence shall be credible, relevant, based in fact, and without prejudice.

T. The right to written notice of the outcome and sanction of the hearing.

U. The right to a Hearing Board comprised of representatives of both genders.

V. The right to be informed in advance, when possible, of any public release of information regarding the complaint.

7.0 Advisors.
The parties are entitled to be accompanied by their advisor in all meetings and interviews at which the party is entitled to be present, including interviews, hearings and appeals. Advisors should help their advisees prepare for each meeting, and are expected to advise ethically, with integrity and in good faith. The College cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney, but the other party does not, or cannot afford an attorney, the College is not obligated to provide one. However, accused individuals may wish to contact organizations such as:

- FACE (http://www.facecampusequality.org)
- SAVE (http://www.saveservices.org)

Alleged victims may wish to contact organizations such as:

- Crime Victims Council (610-437-6611)
All advisors are subject to the same College rules, whether they are attorneys or not. Advisors may not address College officials in a meeting, interview or hearing unless invited to. Advisors may confer quietly with their advisees as necessary, as long as they do not disrupt the process. For longer or more involved discussions, the parties and their advisors should ask for breaks or step out of meetings to allow for private conversation. Advisors will typically be given an opportunity to meet in advance of any interview or hearing with the administrative officials conducting that interview of meeting. This pre-meeting will allow advisors to clarify any questions they may have, and allows the College an opportunity to clarify the role the advisor is expected to take. Advisors are expected to refrain from interference with the College’s investigation and resolution. Any advisor who steps out of their role in any meeting under the College resolution process will be warned once and only once. If the advisor continues to disrupt or otherwise fails to respect the limits of the advisor role, the advisor will be asked to leave the meeting. When an advisor is removed from a meeting, that meeting will typically continue without the advisor present. Subsequently, the Title IX Coordinator or the Student Conduct Officer will determine whether the advisor may be reinstated, may be replaced by a different advisor, or whether the party will forfeit the right to an advisor for the remainder of the process.

The College expects that the parties will wish to share documentation related to the allegations with their advisors. The College provides a consent form that authorizes such sharing. The parties must complete this form before the College is able to share records with an advisor. Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with 3rd parties, disclosed publicly, or used for purposes not explicitly authorized by the College. The College may seek to restrict the role of any advisor who does not respect the sensitive nature of the process or who fails to abide by the College’s privacy expectations.

The College expects an advisor to adjust their schedule to allow them to attend College meetings when scheduled. The College does not typically change scheduled meetings to accommodate an advisor’s inability to attend. The College will, however, allow an advisor who cannot attend in person to attend a meeting by telephone, video and/or virtual meeting technologies as may be convenient and available.

A party may elect to change advisors during the process, and is not locked into using the same advisor throughout.

8.0 Questions and Answers
Here are some of the most commonly asked questions regarding College’s Sexual and Gender-Based Misconduct Policy and Procedures.

- Does information about a complaint remain private?

The privacy of all parties to a complaint of sexual or gender-based misconduct must be respected, except insofar as it interferes with the College’s obligation to fully investigate allegations of sexual or gender-based misconduct. Where privacy is not strictly kept, it will still be tightly controlled on a need-to-know basis. Dissemination of information and/or written materials to persons not involved in the complaint procedure is not permitted. Violations of the privacy of the complainant/alleged victim or the accused individual is a violation of the College’s Social Code and may lead to disciplinary action by the College.

In all complaints of sexual or gender-based misconduct, all parties will be informed of the outcome. In some instances, the administration also may choose to make a brief public announcement of the nature of the violation and the action taken, without using the name or identifiable information of the alleged victim. Certain College administrative managers are informed of the outcome within the bounds of student privacy (e.g., the President of the College, Dean of Students, Director of Campus
Security). The College also must statistically report the occurrence on campus of certain crimes, including certain sex offenses, in an annual report of campus crime statistics. This statistical report does not include personally identifiable information.

- **Will my parents be told?**

No, it’s your decision whether or not to inform your parents. Whether you are the complainant/alleged victim or the accused individual, the College’s primary relationship is to the student and not to the parent. However, in the event of major medical, disciplinary, or academic jeopardy, students are strongly encouraged to inform their parents. College officials will directly inform parents only when requested to do so by a student, in compliance with FERPA or when required under applicable law.

- **Will the accused individual know my identity?**

Yes, if you file a formal complaint. Sexual and gender-based misconduct is a serious offense and the accused individual has the right to know the identity of the complainant/alleged victim. If there is a hearing, the College does provide the option for questioning without confrontation.

- **Do I have to name the accused individual?**

Yes, if you want formal disciplinary action to be taken against the accused individual. No, if you choose to respond informally and do not file a formal complaint (but you should consult the complete confidentiality policy above to better understand the College’s legal obligations depending on what information you share with different College officials). Victims should be aware that not identifying the accused individual may limit the College’s ability to respond comprehensively.

- **What do I do if I am accused of sexual or gender-based misconduct?**

DO NOT contact the alleged victim. You may immediately want to contact someone who can act as your advisor. You may also contact the Title IX Coordinator, who can explain the College’s procedures for addressing sexual and gender-based misconduct complaints. You may also want to talk to a confidential counselor at the College’s Counseling Center or seek other community assistance. See below regarding legal representation.

- **Will I (as a victim) have to pay for counseling/or medical care?**

Counseling and Health Services provided by the College are typically free of charge to students. Women’s Health Services are available in the Health Center through St. Luke’s Center for Advanced Gynecologic Care. All gynecology services will be billed by St. Luke’s Center for Advanced Gynecologic Care through the student's health insurance. Students are responsible for being aware of their health insurance coverage and any limitations. If a victim is accessing other community based services (agency/professional outside of Muhlenberg College), payment for these will be subject to state/local law, insurance requirements, etc. Victims may be eligible to receive financial help from the Victims Compensation Assistance Program through Pennsylvania Crime Victims; eligibility requirements are available on [www.pacrivevictims.com](http://www.pacrivevictims.com).

- **What about legal advice?**

Victims of criminal sexual assault need not retain a private attorney to pursue criminal prosecution because representation will be handled by the District Attorney’s office. You may want to retain an attorney if you are the accused individual or are a victim considering filing a civil action. The accused individual may retain counsel at their own expense if they determine that they need legal advice about criminal prosecution and/or the College’s proceedings under this Policy and the Social Code. Both the responding party and the reporting party may also use an attorney as their advisor during campus proceedings. The role of an attorney in the College’s judicial process is described in the Social Code.
What about changing residence hall rooms?

If you want to move, you may request a room change. Room changes under these circumstances are considered emergencies. It is typically College policy that in emergency room changes, the student is moved to the first available suitable room. If you want the accused individual to move, and believe that you have been the victim of sexual or gender-based misconduct, you must be willing to pursue a formal or informal College complaint. No contact orders can be imposed and room changes for the accused individual can usually be arranged quickly. Other accommodations, if reasonably available, might include:

-- Assistance from College support staff in completing the relocation;
-- Arranging to dissolve a college housing contract and pro-rating a refund;
-- Arranging for on campus housing at a pro-rated charge;
-- Assistance with or rescheduling an academic assignment (paper, exams, etc.);
-- Taking an incomplete in a class;
-- Assistance with transferring class sections;
-- Temporary withdrawal;
-- Assistance with alternative course completion options; and/or
-- Other accommodations for safety as necessary.

What should I do about preserving evidence of a sexual assault?

Police are in the best position to secure evidence of a crime. Physical evidence of a criminal sexual assault must be collected from the alleged victim’s person within 72 hours, though evidence can often be obtained from towels, sheets, clothes, etc. for much longer periods of time. If you believe you have been a victim of a criminal sexual assault, you should go to one of the following: St. Luke’s Hospital (Allentown) Emergency Room, Lehigh Valley Hospital Center Emergency Room, or Student Health Services before washing yourself or your clothing. The Sexual Assault Forensic Examiner (a specially trained medical professional) at the hospital is usually on call 24 hours a day, 7 days a week. If you first want to speak to a medical professional call the Emergency Room at St. Luke’s Hospital at (610) 770-8300, Lehigh Valley Hospital Center at (610) 402-8000 or Health Services at (484) 664-3199. Personnel from the College’s Health Center can also accompany you to the hospital and law enforcement or Campus Safety can provide transportation. If a victim goes to the hospital, local police may be called, but s/he is not obligated to talk to the police or to pursue prosecution. Having the evidence collected in this manner will help to keep all options available to a victim, but will not obligate him or her to any course of action. Collecting evidence can assist the authorities in pursuing criminal charges, should the victim decide later to exercise it.

NOTE: The hospital staff will collect evidence, check for injuries, address pregnancy concerns and address the possibility of exposure to sexually transmitted infections. If you have changed clothing since the assault, bring the clothing you had on at the time of the assault with you to the hospital in a clean, sanitary container such as a clean paper grocery bag or wrapped in a clean sheet (plastic containers do not breathe, and may render evidence useless). If you have not changed clothes, bring a change of clothes with you to the hospital, if possible, as they will likely keep the clothes you are wearing as evidence. You can take a support person with you to the hospital, and they can accompany you through the exam, if you want. Do not disturb the crime scene—leave all sheets, towels, etc. that may bear evidence for the police to collect.

Will a victim be sanctioned when reporting a sexual or gender-based misconduct policy violation if they have illegally used drugs or alcohol?

No. The severity of the infraction will determine the nature of the College’s response, but whenever possible the College will respond educationally rather than punitively to the illegal use of drugs and/or alcohol. The seriousness of sexual and gender-based misconduct is a major concern and the
College does not want any of the circumstances (e.g., drug or alcohol use) to inhibit the reporting of sexual and gender-based misconduct.

- **Will the Use of alcohol or other drugs affect the outcome of a sexual misconduct resolution?**

  The use of alcohol and/or other drugs by either party will not diminish the responding party’s responsibility. On the other hand, alcohol and/or drug use is likely to affect the reporting party’s memory and, therefore, may affect the resolution of the reported misconduct. A reporting party must either remember the alleged incident or have sufficient circumstantial evidence, physical evidence and/or witnesses to prove that policy was violated. If the reporting party does not remember the circumstances of the alleged incident, it may not be possible to impose sanctions on the responding party without further corroborating information. Use of alcohol and/or other drugs will never excuse a violation by a responding party.

- **Will either party’s use of alcohol or other drugs be a factor when reporting sexual misconduct?**

  Not unless there is a compelling reason to believe prior use or abuse is relevant to the present matter.

- **What should I do if I am uncertain about what happened?**

  If you believe that you have been the victim of sexual or gender-based misconduct, but are unsure of whether it was a violation of this Policy, you should contact one of the following individuals: For a confidential discussion contact Counseling Services at (484) 664-3178; otherwise you may contact Campus Safety at (484) 664-3110.

9.0 **Sexual Violence – Risk Reduction Tips**

  Risk reduction tips can often take a victim-blaming tone, even unintentionally. With no intention to victim-blame, and with recognition that only those who commit sexual violence are responsible for those actions, these suggestions may nevertheless help you to reduce your risk of experiencing a non-consensual sexual act. Below, suggestions to avoid being accused of committing a non-consensual sexual act are also offered:

  1. If you have limits, make them known as early as possible.
  2. Tell a sexual aggressor “NO” clearly and firmly.
  3. Try to remove yourself from the physical presence of a sexual aggressor.
  4. Find someone nearby and ask for help.
  5. Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity. Intoxication makes one more likely to be the victim of a sexual assault and limiting or eliminating alcohol or drug use can reduce your risk.
  6. Take care of your friends and ask that they take care of you. Help your friends make positive decisions and listen to them as well. When going out, stay in groups, inform your friends of your whereabouts and get each other home safely.

  If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk for being accused of sexual misconduct:

  1. Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
  2. Understand and respect personal boundaries.
  3. DON’T MAKE ASSUMPTIONS about consent; about someone’s sexual availability; about whether they are attracted to you; about how far you can go or about whether they are physically and/or mentally able to consent. If there are any questions or ambiguity then you DO NOT have consent.
4. Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. They may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which they are comfortable.

5. Don’t take advantage of someone’s drunkeness or drugged state, even if they did it to themselves. An individual who is intoxicated or otherwise impaired may not be able to give effective consent to sexual behavior.

6. Realize that your potential partner could be intimidated by you, or fearful. You may have a power advantage simply because of your gender or size. Don’t abuse that power.

7. Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.

8. Silence and passivity cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

10.0 Definitions

**Alcohol and Drug Use:** Sexual activity with someone who one should know to be -- or based on the circumstances should reasonably have known to be -- mentally or physically incapacitated (by alcohol or other drug use, unconsciousness or blackout), constitutes a violation of this Policy. Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the "who, what, when, where, why or how” of their sexual interaction). This Policy also covers a person whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the taking of “date rape” drugs. Possession, use and/or distribution of any of these substances, including Rohypnol, Ketomine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another student is a violation of this Policy. Notably, alcohol, due to its accessibility, lack of stigma and the fact that it is deemed socially acceptable to provide it to others, is the most common “date rape” drug. More information on these drugs can be found at [http://www.911rape.org/](http://www.911rape.org/). Use of alcohol or other drugs will never function as a defense for any behavior that violates this Policy.

**Coercion:** Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

**Consent:** Consent is clear, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity. Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity. Previous relationships or prior consent cannot imply consent to future sexual acts. In order to give effective consent, one must be of legal age.

**Dating violence:** Dating violence is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition: (i) dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse; and (ii) dating violence does not include acts covered under the definition of domestic violence.

**Domestic violence:** Domestic violence is a felony or misdemeanor crime of violence committed (i) by a current or former spouse or intimate partner of the victim; (ii) by a person with whom the victim shares a child in common; (iii) by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; (iv) by a person similarly situated to a spouse of
the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or (v) by 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 the jurisdiction in which the crime of violence occurred.


Force: Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent (“Have sex with me or I'll hit you. Okay, don't hit me, I'll do what you want.”). NOTE: There is no requirement that a party resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.

Stalking: Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress. For the purposes of this definition: (i) “course of conduct” means two or more acts, including, but not limited to, acts in which the stalker 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; (ii) “reasonable person” means a reasonable person under similar circumstances and with similar identities to the victim; and (iii) “substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

11.0 Examples

1. Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00pm until 3:00am, Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. He keeps at her, and begins to question her religious convictions, and accuses her of being “a prude.” Finally, it seems to Bill that her resolve is weakening, and he convinces her to give him a “hand job” (hand to genital contact). Amanda would never had done it but for Bill's incessant advances. He feels that he successfully seduced her, and that she wanted to do it all along, but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn't want it, she could have left. Bill is responsible for violating the university Non-Consensual or Forced Sexual Contact policy. It is likely that a university hearing board would find that the degree and duration of the pressure Bill applied to Amanda are unreasonable. Bill coerced Amanda into performing unwanted sexual touching upon him. Where sexual activity is coerced, it is forced. Consent is not effective when forced. Sex without effective consent is sexual misconduct.

2. Jack is a junior at the university. Beth is a sophomore. Jack comes to Beth’s dorm room with some mutual friends to watch a movie. Jack and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jack and Beth are alone. They hit it off, and are soon becoming more intimate. They start to make out. Jack verbally expresses his desire to have sex with Beth. Beth, who was abused by a baby-sitter when she was five, and has not had any sexual relations since, is shocked at how quickly things are progressing. As Jack takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with her, Beth has a severe flashback to her childhood trauma. She wants to tell Jack to stop, but cannot. Beth is stiff and unresponsive during the intercourse. Is this a policy violation? Jack would be held responsible in this scenario for Non Consensual Sexual Intercourse. It is the duty of the sexual initiator, Jack, to make sure that he has mutually understandable consent to engage in sex. Though consent need not be verbal, it is the clearest form of consent. Here, Jack had no verbal or non-verbal mutually understandable
indication from Beth that she consented to sexual intercourse. Of course, wherever possible, students should attempt to be as clear as possible as to whether or not sexual contact is desired, but students must be aware that for psychological reasons, or because of alcohol or drug use, one’s partner may not be in a position to provide as clear an indication as the policy requires. As the policy makes clear, consent must be actively, not passively, given.

3. Kevin and John are at a party. Kevin is not sure how much John has been drinking, but he is pretty sure it’s a lot. After the party, he walks John to his room, and John comes on to Kevin, initiating sexual activity. Kevin asks him if he is really up to this, and John says yes. Clothes go flying, and they end up in John’s bed. Suddenly, John runs for the bathroom. When he returns, his face is pale, and Kevin thinks he may have thrown up. John gets back into bed, and they begin to have sexual intercourse. Kevin is having a good time, though he can’t help but notice that John seems pretty groggy and passive, and he thinks John may have even passed out briefly during the sex, but he does not let that stop him. When Kevin runs into John the next day, he thanks him for the wild night. John remembers nothing, and decides to make a report to the Dean. This is a violation of the Non-Consensual Sexual Intercourse Policy. Kevin should have known that John was incapable of making a rational, reasonable decision about sex. Even if John seemed to consent, Kevin was well aware that John had consumed a large amount of alcohol, and Kevin thought John was physically ill, and that he passed out during sex. Kevin should be held accountable for taking advantage of John in his condition. This is not the level of respectful conduct the university expects.