



# Faculty & Staff Policy & Procedures Update

Mercy College of Health Sciences  
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# Agenda

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- Overview of Sexual Misconduct and Title IX prevention and response obligations
- Accreditation and Governance Update



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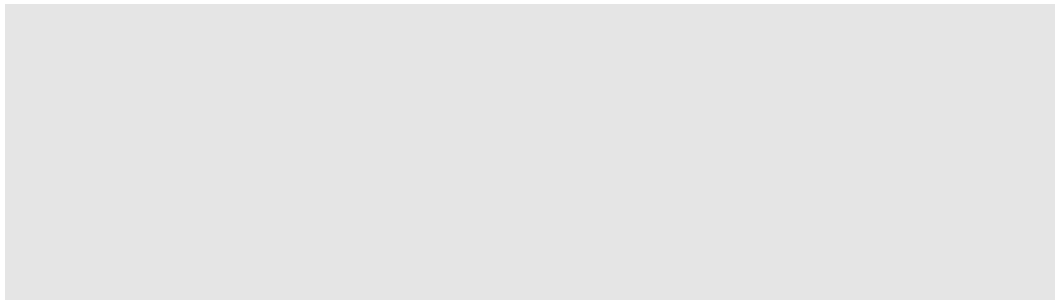
# Mercy College of Health Sciences

## Core Values

- *Knowledge*
- *Reverence*
- *Integrity*
- *Compassion*
- *Excellence*



# Sexual Misconduct & Title IX



# Relevant Laws

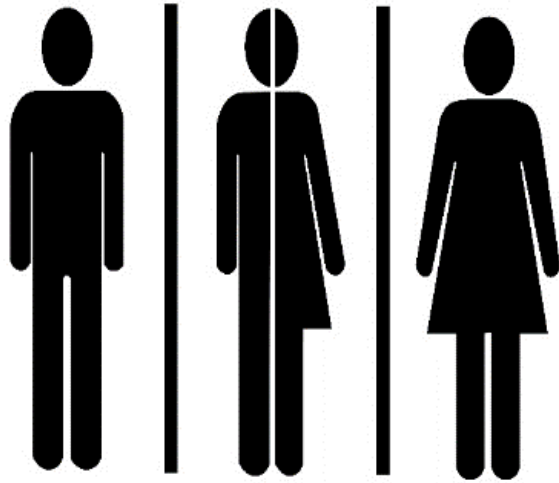


Title IX of the Higher Education  
Amendments of 1972

**1972**

**2013**

Violence Against Women  
Reauthorization Act of 2013



## What is Title IX

*"[N]o 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."*

32 C.F.R. § 106.31

# New Title IX Regulations

- Issued May 6, 2020
- Effective August 14, 2020





Policy  
Prohibits ...

- Sexual Harassment
- Sexual Misconduct

# Interplay of Sexual Misconduct & Title IX Policy with Other Policies

- Sexual Misconduct & Title IX Policies and Procedures
- Related Policies
  - Non-Discrimination
  - Equal Employment Opportunity
  - Code of Professional/Ethical Conduct
  - Handbooks
  - Other College Policies

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# Poll Question

- Does the Title IX and Sexual Misconduct apply to clinical sites?
  - Yes
  - No
  - Maybe

# Scope of Title IX and Sexual Misconduct Policy

- All faculty, staff, employees
- Volunteers
- Contractors
- Students
- Visitors
- Recruiting
- Admissions
- Financial Aid/Scholarships
- Housing
- Academics
- Clinicals
- Extracurricular Activities
- Service Learning
- Employment

## Reporting Sexual Harassment/ Sexual Misconduct

- Employees (unless excepted in Policy) *must* report
  - To Title IX Coordinator/Deputy
- When they
  - Receive a report
  - Witness conduct
  - Otherwise obtain information about such conduct
- Administrators/Deans/  
Chairs/Managers
  - Inform employees of policy
  - Implement initiatives
  - Implement corrective actions
- Students *are encouraged* to (“should file”) a report
- Anyone *may* report

# Title IX and Sexual Misconduct Reporting – Contact

## **Anne Dennis, Title IX Coordinator**

Vice President, Employee Engagement and  
Human Resources

Sullivan Center Room 110

928 6<sup>th</sup> Avenue

Des Moines, IA 50309

515.643.6640

[adennis@mercydesmoines.org](mailto:adennis@mercydesmoines.org)

## **Lyneene Richardson, Deputy Title IX Coordinator- Students**

Dean of Students

ACE 181

928 6<sup>th</sup> Avenue

Des Moines, IA 50309

515.643.6659

[lrichardson@mercydesmoines.org](mailto:lrichardson@mercydesmoines.org)

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# Poll Question

- May you promise members of the College community that you will keep information about a potential Policy violation confidential?
  - Yes
  - No
  - It depends on the “hat” I’m wearing and what they say

## Designated Confidential Resources

Community resources  
(listed in policy)

Professionals with duty  
*serving in professional role*





The College can never promise absolute confidentiality, unless reports are only made to confidential resources.



Parties to investigations must be given access to certain information.


Do not  
promise  
confidentiality

# Timing of Reports

Reports should be made as soon as possible.



Late reporting limits the ability to investigate and respond.



There is, however, no statute of limitations.

# What is Sexual Harassment?

Policy Prohibits conduct on the basis of sex occurring in U.S. that constitutes:

- Quid Pro Quo Sexual Harassment
- Hostile Environment Sexual Harassment
- Sexual Assault
  - Rape
  - Sodomy
  - Sexual Assault with an Object
  - Fondling
  - Incest
  - Statutory Rape
- Domestic Violence
- Dating Violence
- Stalking
- Related Retaliation

## Examples of Prohibited Sexual Misconduct

- Refusing to hire because of someone's sex
- Pregnancy discrimination
- Gender-based harassment/stereotyping
- Conduct that would otherwise be "Sexual Harassment" that occurs outside the U.S.
- "Sexual Harassment" as defined by Title IX regulations



# Quid Pro Quo Sexual Harassment

An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participating in unwelcome sexual conduct.

- *E.g., "I will put your name in for a raise if you kiss me."*

# Hostile Environment Sexual Harassment

- Conduct must be *so severe, pervasive, and objectively offensive* that it effectively denies a person access to College programs or activities

## Unwelcome:

- Repeated pressure to date
- Touching
- Jokes of a sexual nature
- Teasing because a male doesn't "act like a man"
- Texting or emailing explicit pictures or messages
- Calling a pregnant woman offensive names based on pregnancy/sex
- Lying about a person's sex life

# Sexual Assault

- Rape
- Sodomy
- Sexual Assault with an Object
- Fondling
- Incest
- Statutory Rape

# Consent


Consent to engage in sexual activity is a voluntary and knowing act. Lack of consent is critical in determining whether sexual violence has occurred. Consent must be given for each form of sexual contact and with each sexual partner. Consent requires affirmative, clear, unambiguous acts or statements by each person involved. Consent is not passive.

- If coercion, intimidation, threats, and/or physical force are used, there is no consent.
- If a person is mentally or physically incapacitated or impaired by alcohol or drugs such that the person cannot understand the fact, nature, or extent of the sexual situation, there is no consent.
- If a person is asleep or unconscious, there is no consent.
- Consent to one form of sexual activity does not imply consent to other forms of sexual activity.
- Previous consent for sexual activity does not give consent for future sexual activity.
- Consent can be withdrawn. A person who initially consents to sexual activity is deemed not to have consented to any sexual activity that occurs after he or she withdraws consent.
- Within the state of Iowa consent cannot be given by a minor under the age of 16.





# Incapacitation

- A state where an individual cannot make an informed and rational decision to consent to engage in sexual contact because the individual lacks conscious knowledge of the nature of the act (e.g., to understand the “who, what, where, when, why or how” of the sexual interaction) and/or is physically or mentally helpless.
  - An individual is also considered incapacitated, and therefore unable to give consent, when asleep, unconscious, or otherwise unaware that sexual contact is occurring.
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# Domestic Violence

Involves a pattern of abusive behavior in any relationship that is used by a person to gain or maintain power and control over another household or family member. Household or family member is a spouse, cohabitant, or anyone who has a child in common, regardless of if they are married or reside together. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This would include behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.

# Dating Violence

Violence committed by a person –

- Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- Where the existence of such a relationship will be determined based on a consideration of the following factors:
  - The length of the relationship
  - The type of relationships; and
  - The frequency of interaction between the persons involved in the relationship.

# Stalking

“Stalking” is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for their safety or the safety of others; or
- Suffer substantial emotional distress.

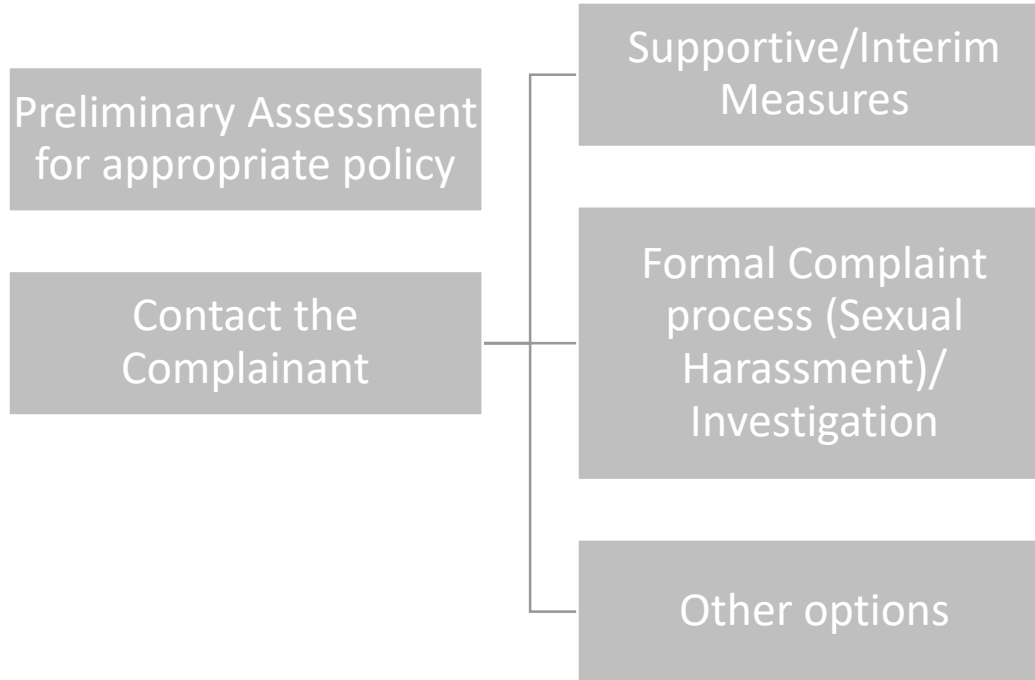
# Retaliation

Intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by the policy because an individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.

A note about  
protected  
speech . . .

When is the  
College's  
Sexual  
Misconduct  
& Title IX  
Policy Used?

To investigate and adjudicate  
complaints about Sexual  
Harassment and Sexual Misconduct  
as defined in the Policy.



What happens when a report is made?




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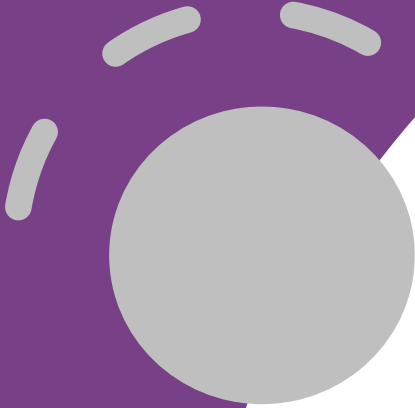
# Poll Question

- True or False: the College will always suspend a Sexual Harassment/Sexual Misconduct investigation if law enforcement is investigating the matter
  - True
  - False



# Conduct that Constitutes a Crime

- The College's obligations are independent of criminal investigations
- The College's investigation may be delayed to avoid interference with a criminal investigation
- Criminal investigation does not dictate the outcome of the College's investigation
- The College encourages reporting to law enforcement



# Sexual Harassment Resolution Procedures

# Notices

- Parties will be given notice of allegations, meetings, and procedures throughout resolution of Sexual Harassment allegations

# Conflicts of Interest

- All College officials involved in the Sexual Harassment process will be free from conflicts of interest
- The Title IX Coordinator, other officials, and the parties themselves are responsible for noting potential conflicts – or the appearance of conflicts – as soon as possible
- Parties who do not note potential conflicts when they have reason to know about them may waive the opportunity to address those conflicts on appeal

# Advisor of Choice



During the investigation, adjudication, and appeal, both parties have the right to be accompanied by an advisor of choice

Advisor plays a passive role, except that advisor may question witnesses during a hearing


If a party is not able to secure an advisor for the hearing, the College will provide one

# Supportive Measures

The College  
will provide supportive measures  
to protect the parties.

- Separating or limiting contact between the parties
- Changing academic situation
- Changing living situation
- Changing employment situation

# Investigation

- Parties will have an equal opportunity to be interviewed, present witnesses, and present evidence
  - Investigation is documented
  - Evidence will be transmitted to the parties at the end of evidence collection for their review and response
  - Investigator will prepare a written report that will be shared with the parties
- 



# Hearing

Live (may be virtual)

Parties may request to be separated

Parties have equal opportunities to present information, testimony, and evidence, and to question witnesses

Advisors may cross-examine witnesses

Strict rules of evidence do not apply

Hearing officer will make determinations about whether evidence is relevant to the question of whether a policy violation occurred



## Parties/Witnesses Choosing Not to Be Questioned

If any party or witness refuses to attend the hearing, or attends but refuses to submit to questioning by the parties' advisors, the statements of that party or witness—including those given during the investigation or during the hearing—will not be considered by the hearing officer in reaching a determination of responsibility.

# After the Hearing



DECISION BASED ON THE  
***PREPONDERANCE OF THE  
EVIDENCE STANDARD***



DISCIPLINE TO BE  
IMPOSED

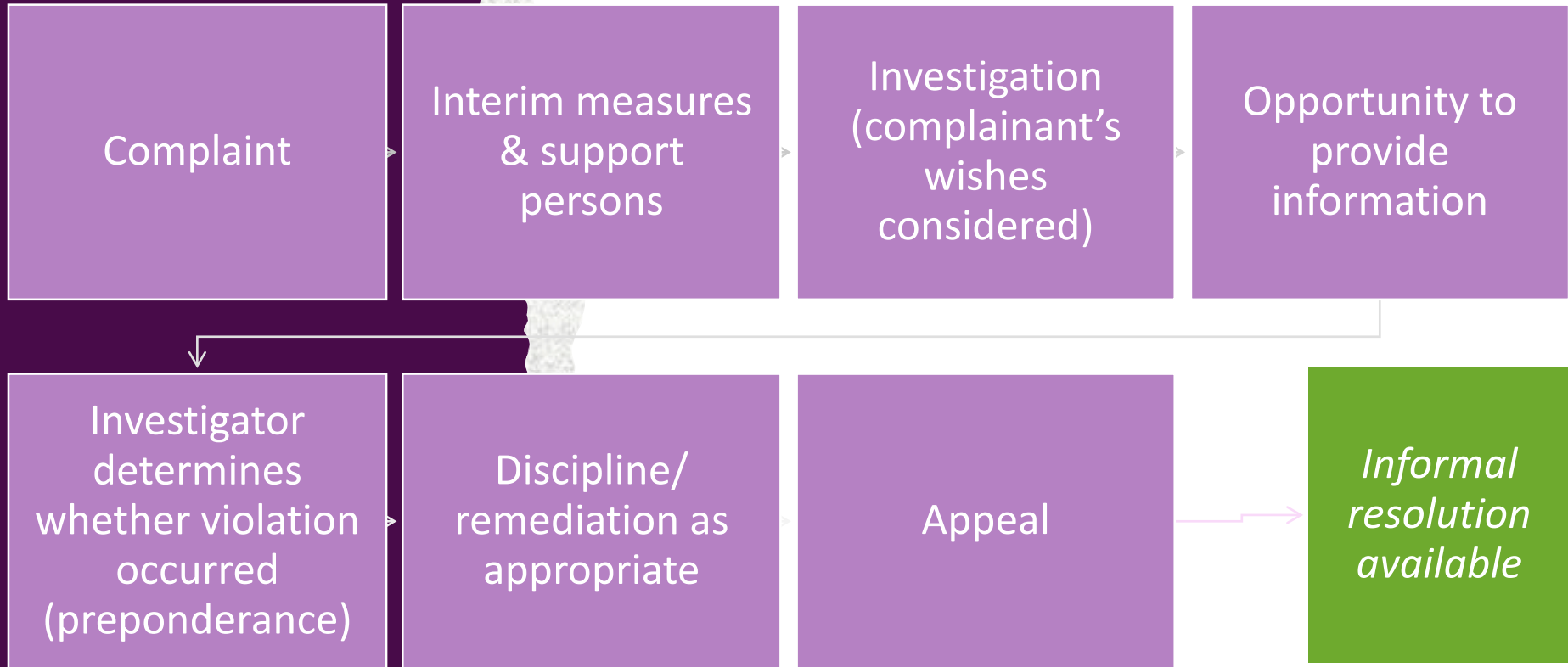


WRITTEN DECISION

# Informal Resolution

- (Not permitted in Employee → Student Sexual Harassment)
- Parties may consent to information resolution at any time, with the approval of the Title IX Coordinator
- Process is determined by the parties and the Title IX Coordinator and agreed to in writing
- Resolution (if reached) is also agreed to in writing
- Once signed, the resolution is final and not appealable

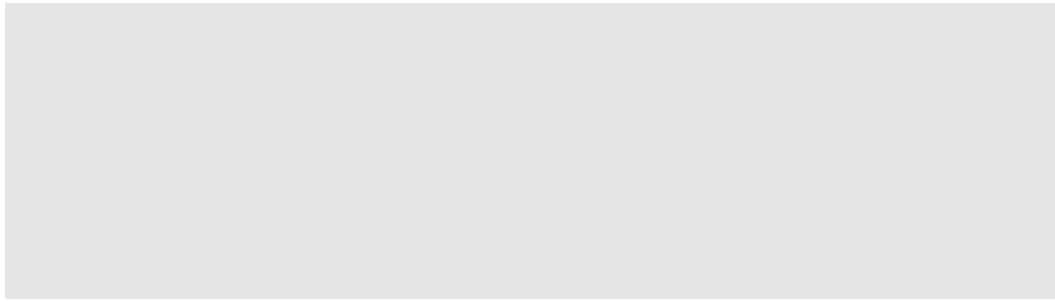
# Sexual Misconduct Procedures



# Sex Discrimination Prevention Summary

- Sexual Harassment & Sexual Misconduct Prohibited
- All College employees (except Confidential Resources) have a duty to report
- The College will investigate, adjudicate, and remediate
- Further information:
  - Title IX Coordinator
  - Title IX & Sexual Misconduct Policy

# Shared Governance



# What is Shared Governance?

- Certain groups exercise primary decision-making responsibility in designated areas
- Well-defined process involving stakeholders
  - Legal authority is granted to the governing board
  - Administrators and faculty are delegated certain authority
  - Faculty are represented in key decision-making, generally through elected representation



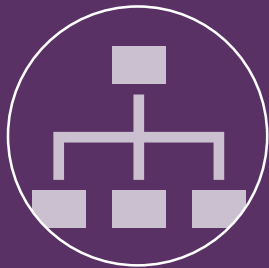
# Association of Governing Boards

- Board
  - Ultimately responsible for assuring that the education offered by the institution is “of the highest possible quality.”
  - This role is as significant as the Board’s role regarding the institution’s resources. See *AGB Statement on Board Responsibility for the Oversight of Educational Quality* (2011).
- Faculty
  - Play a substantial role in educational design and delivery
  - Responsibility is understood to be shared with the Board.
    - “[C]urricular matters . . . normally would fall within the delegated decision-making authority of appropriate faculty and administrative entities operating within the framework of policies and delegations of the board. The board should also reserve the right to review and ratify specified academic decisions, as well as proposals to adopt major new academic programs or eliminate others.” *AGB Statement on Institutional Governance* (1998).
- “One of higher education’s most distinctive values is its commitment to shared governance. Simply put, shared governance is a fundamental principle of inclusion in key areas of institutional responsibility and decision making. Governing boards hold ultimate authority for an institution, as defined in bylaws and other foundational documents . . . . There is very little debate on this point. However, through longstanding academic practice, this authority is delegated – or ‘shared with’ – institutional leaders and faculty. Typically, presidents are charged with institutional leadership, strategic planning, and daily management, while faculty are charged with educational design and delivery.” *AGB Board of Directors’ Statement on Shared Governance* (2017).
- Faculty members set learning goals, develop academic courses and programs, and assess the quality of those programs, but boards may not “delegate away their governance responsibility for educational quality.” *AGB Statement on Board Responsibility for the Oversight of Educational Quality* (2011).

# AAUP

- “*When and educational goal has been established, it becomes the responsibility primarily of the faculty to determine the appropriate curriculum and procedures of student instruction.*” AAUP Policy Documents and Reports (11<sup>th</sup> ed., 2015) (emphasis added)
- “Such matters as major changes to the size or composition of the student body and the relative emphasis to be given to the various elements of the educational and research program should involve participation of the governing board, administration, and faculty prior to final decision.” *Id.*
- For major decisions affecting the institution, “The faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process. *On these matters, the power of review or final decision lodge in the governing board* or delegated by it to the president should be exercised adversely only in exceptional circumstances, and for reasons communicated to the faculty.” *Id.*

# Responsibilities



## Board

Control and generally manage the College in accordance with the mission

- Exercise powers in the best interests of the College



## Administration

- Financial decisions
- Student life
- HR
- Operations



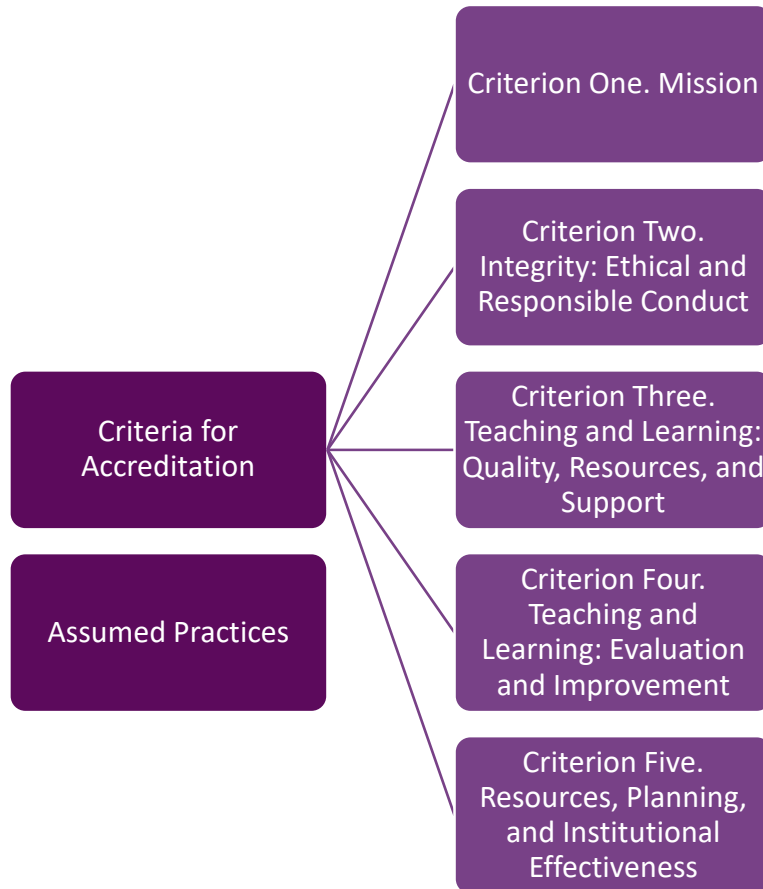
## Faculty

Teaching

- Research/Writing
- Advising
- Committees:
  - Curricular decisions
  - Personnel decisions?



# Higher Learning Commission



## Core Component 2.C

*The governing board of the institution is sufficiently autonomous to make decisions in the best interest of the institution and to assure its integrity.*

2.C.2: Board reviews and considers the reasonable and relevant interests of internal and external constituencies during its decision-making deliberations.

2.C.4: Board delegates day-to-day management of the institution to the administration and expects the faculty to oversee academic matters.

# Core Component 5.B



*The institution's governance and administrative structures promote effective leadership and support collaborative processes that enable the institution to fulfill its mission.*

5.B.1: Board provides oversight of financial and academic policies and practices and meets its legal and fiduciary responsibilities.

5.B.2: Institution employs policies and procedures to engage internal constituencies in governance.

5.B.3: Administration, faculty, staff, and students are involved in setting academic requirements, policy, and processes.

## Core Component 5.C

*The institution engages in systematic and integrated planning.*

5.C.3: The planning process encompasses the institution as a whole and considers the perspectives of internal and external constituent groups.

# Assumed Practices

- Faculty participate substantially in:
  - oversight of the curriculum—its development and implementation, academic substance, currency, and relevance for internal and external constituencies;
  - assurance of consistency in the level and quality of instruction and in the expectations of student performance;
  - establishment of the academic qualifications for instructional personnel;
  - analysis of data and appropriate action on assessment of student learning and program completion.





# College Bylaws: Fundamental Board Responsibilities



Monitor performance to ensure College's **objectives and major policies are in accord with its mission and purpose**



Monitor the **financial** and overall performance of the College in furthering its purposes and ensure adequate financial resources to support institutional goals



Provide for the **strategic plan and approve long range plans** for the College **consistent with its mission**



**Attain and maintain appropriate accreditation and program approvals** for all programs and ensure they meet applicable requirements for licensure, accreditation, certification, student financial assistance, and educational grants



Preserve the integrity of the College, **making decisions in the best interests of the College and its internal and external constituencies**



**Oversee the fiscal affairs of the College**



Establish the operating structure of the College, **delegating day-to-day management of the College to the administration and oversight of academic matters to the faculty**



**Approve institutional policies relating to financial matters, academic programs, faculty and student affairs, college facilities, and equipment**, in order to ensure high academic and professional standards and to comply with all standards established by accrediting bodies

# Best Practices for Effective Shared Governance

- Agreement
- Assessment
- Support
- Transparency

# Mercy College of Health Sciences

## Core Values

- *Knowledge*
- *Reverence*
- *Integrity*
- *Compassion*
- *Excellence*



Questions?

