

# UNIVERSITY POLICIES

## SEX DISCRIMINATION, SEXUAL MISCONDUCT AND INTERPERSONAL VIOLENCE POLICY

### **1. SCOPE OF THE POLICY**

Mount St. Joseph University (the “University”) is committed to providing an educational environment free from discrimination and harassment on the basis of race, color, national origin, religion, age, disability, sex, pregnancy, sexual orientation, gender identity, veteran status, or any other legally protected status. This policy focuses on incidents of sex discrimination (including sexual harassment and sexual misconduct), domestic violence, dating violence, and stalking. For incidents of discrimination, harassment, or retaliation related to race, color, national origin, religion, age, disability, veteran status or other legally protected statuses (including sex discrimination outside the scope of Title IX), please see the University’s Equal Opportunity and Non-Discrimination Policy.

This policy applies to all University community members, including students, prospective students, employees, professors, administrators, visitors, or other third-parties. This policy applies to all of the University’s education programs and activities, which includes but is not limited to, admissions and employment. This policy applies not only to conduct occurring within the typical classroom or campus settings, but also to any location owned or operated by the University, owned or controlled by a student organization that is officially recognized by the University, as well as locations, events or circumstances over which the University exerts substantial control even if taking place outside of those typical settings.

Off-campus conduct that has an actual or potential adverse impact on another’s working or learning environment may also violate this policy. The University will consider the effects of off-campus conduct—including conduct that did not occur in the context of an education program or activity—when evaluating whether there is a violation of Title IX of the Education Amendments of 1972 and/or this University policy. The University expects that all members of its community will help promote a learning environment free from the conduct prohibited under this policy.

### **2. SEX DISCRIMINATION, INCLUDING SEXUAL HARASSMENT, SEXUAL ASSAULT, AND OTHER SEXUAL MISCONDUCT**

Title IX of the Education Amendments of 1972 prohibits sex discrimination—which includes sexual harassment and other forms of sexual misconduct—in education programs and activities. Educational institutions receiving federal funds must comply with Title IX. If you have experienced sex discrimination, please review this policy for information about your Title IX rights.

Sexual harassment is a form of sex discrimination. Conduct that may constitute sexual harassment under University policy includes, but is not limited to, unwelcome sexual advances,

requests for sexual favors and other unwanted and offensive verbal, electronic, or physical conduct based on sex or of a sexual nature. It also includes acts of sexual misconduct, such as sexual assault (both nonconsensual intercourse and non-consensual sexual contact), sexual exploitation, and indecent exposure.

Under the 2020 amendment to the Title IX regulations, sexual harassment is defined as:

- (1) A University employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; or
- (3) Sexual assault, dating violence, domestic violence, or stalking, as defined below.

This definition of sexual harassment and the procedure set forth in this policy applies to situations arising within the scope of Title IX. Situations that involve sexual discrimination, harassment or retaliation that falls outside of the scope of Title IX may be addressed under the processes set forth in the University's Equal Opportunity and Nondiscrimination Policy, the Student Disciplinary Proceedings Policy, or other applicable policy, as deemed appropriate by the University.

## **2. INTERPERSONAL VIOLENCE, INCLUDING DOMESTIC VIOLENCE, DATING VIOLENCE AND STALKING**

Incidents of sexual harassment, sexual assault and/or other sexual misconduct sometimes also involve acts of interpersonal violence including but not limited to sexual assault, domestic violence, dating violence, and stalking as defined in this policy. The University prohibits interpersonal violence such as domestic violence, dating violence, and stalking, regardless of whether it is related to conduct of a sexual nature. If you have experienced interpersonal violence including, but not necessarily limited to, domestic violence, dating violence, and stalking, please review this policy for more information.

## **3. ANTI-RETALIATION**

The University will not tolerate any form of retaliation taken against anyone who reports or makes a formal complaint of conduct prohibited by this policy or anyone who cooperates in the investigation of a complaint of conduct prohibited by this policy. Any such prohibited retaliation will be considered a separate violation of this policy and will be subject to the complaint resolution and disciplinary procedures set forth below.

## **4. OTHER MISCONDUCT**

Inappropriate or unprofessional remarks or other conduct may be reason for intervention and/or discipline even if such misconduct does not ultimately constitute or rise to the level of unlawful sexual harassment, sexual assault, domestic violence, dating violence, or stalking, as those terms are defined in this policy and/or by applicable law. In addition, if any student or employee is found through proceedings brought pursuant to this policy to have engaged in misconduct in

violation of another University policy or standard of conduct, the student or employee will be subject to disciplinary action pursuant to policy or standard that was violated even if no violation of this policy is found.

## **5. TITLE IX COORDINATOR**

The University has designated Paige Ellerman, Vice President of Compliance, Risk, and Legal Affairs/Title IX Coordinator, as its Title IX Coordinator. Paige Ellerman can be contacted at 513-244-4393, [Paige.Ellerman@msj.edu](mailto:Paige.Ellerman@msj.edu), 5701 Delhi Road, Cincinnati, OH 45233. The Title IX Coordinator is the individual responsible for responding to inquiries, addressing complaints, coordinating informal resolutions, formal investigations and adjudications, and coordinating compliance with the University's responsibilities under Title IX of the Education Amendments of 1972.

Inquiries, issues, reports, or formal complaints relating to sex discrimination, sexual misconduct, interpersonal violence or retaliation should be directed to the Title IX Coordinator. Inquiries regarding application of Title IX to the University may also be directed to the Assistant Secretary for Civil Rights at the United States Department of Education. Information regarding key staff at the U.S. Department of Education's Office for Civil Rights may be found here: <https://www2.ed.gov/about/offices/list/ocr/contactus2.html>.

## **6. DEFINITIONS**

### **Sexual Harassment**

The definition of sexual harassment that will be applied in the context of allegations arising within the scope of this Title IX policy is set forth above.

Outside the context of Title IX, prohibited sexual harassment includes, but is not limited to, unwelcome sexual advances, requests for sexual favors and other unwanted and offensive verbal, electronic, or physical conduct based on sex or of a sexual nature when:

- such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive working or academic environment; or
- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic achievement or advancement; or
- submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting such individuals.

In addition, the University reserves the right to address conduct that could lead to sexual harassment before it rises to the level of unlawful conduct in accordance with this and other University policies and procedures.

### **Sexual Assault**

Sexual assault includes an offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. This form of sexual misconduct generally includes any sexual act directed against another person, without the

consent of the victim, including instances where the victim is incapable of giving consent. For further clarity, sexual assault includes, but is not necessarily limited to:

- penetration (including attempts), no matter how slight, of the vagina or anus with any body part or object, or oral penetration (including attempts) by a sex organ of another person, without the consent of the victim;
- oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly against that person's will where the victim is incapable of giving consent;
- the use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly against the person's will where the victim is incapable of giving consent;
- the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim;
- non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

### **Domestic Violence**

Domestic violence includes conduct that would meet the definition of felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction where the conduct takes place, or 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 where the conduct takes place.

Under Ohio Revised Code § 2919.25, domestic violence is defined and prohibited as follows:

- a. No person shall knowingly cause or attempt to cause physical harm to a family or household member.
- b. No person shall recklessly cause serious physical harm to a family or household member.
- c. No person, by threat of force, shall knowingly cause a family or household member to believe that the offender will cause imminent physical harm to the family or household member.

The complete text of Ohio Revised Code §2919.25 is found at <http://codes.ohio.gov/orc/2919.25>.

An individual need not be charged with or convicted of a criminal offense to be found responsible for domestic violence pursuant to this policy.

### **Dating Violence**

Dating violence means 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 the relationship shall be determined based on a consideration of the following factors:

- the length of the relationship;
- the type of relationship; and
- the frequency of interaction between the persons involved in the relationship.

## Stalking

Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress. 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. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.

Under Ohio Revised Code §2903.211, menacing by stalking is defined and prohibited as follows:

(A)(1) No person by engaging in a pattern of conduct shall knowingly cause another person to believe that the offender will cause physical harm to the other person or cause mental distress to the other person. In addition to any other basis for the other person's belief that the offender will cause physical harm to the other person or the other person's mental distress, the other person's belief or mental distress may be based on words or conduct of the offender that are directed at or identify a corporation, association, or other organization that employs the other person or to which the other person belongs.

(A)(2) No person, through the use of any electronic method of remotely transferring information, including, but not limited to, any computer, computer network, computer program, or computer system, shall post a message with purpose to urge or incite another to commit a violation of division (A)(1) of this section.

(A)(3) No person, with a sexual motivation, shall violate division (A) (1) or (2) of this section. The full text of Ohio Revised Code §2903.211 is found at <http://codes.ohio.gov/orc/2903.211>. An individual need not be charged with or convicted of a criminal offense to be found responsible for stalking pursuant to this policy.

## Consent

Consent is permission that is clear, knowing, voluntary, and expressed prior to engaging in and during an act. Consent is active, not passive. Consent requires words and/or actions that demonstrate a voluntary agreement to engage in mutually agreed-upon sexual activity.

- **Both partners must clearly communicate their willingness and permission through mutually understandable words and/or actions.** Consent is a "yes" through words and/or actions, not the absence of the word "no." Failure to resist sexual advances, silence, and/or prior dating or sexual relationship does not constitute consent. Both partners have the right to revoke their consent at any time during the sexual activity by communicating (verbally or non-verbally) their desire to stop the activity. Consent to one form of sexual contact does not constitute consent to any other form of sexual contact, nor does consent to sexual contact with one person constitute consent to sexual contact with any other person. Additionally, consent to sexual contact on one occasion is not consent to engage in sexual contact on

another occasion. There is no requirement that an individual verbally or physically resists unwelcome sexual contact for there to be a violation of this policy.

- **Both partners need to be fully conscious and aware of their actions.** A person is unable to give consent if they are asleep, drugged, intoxicated, unconscious, a minor, mentally or physically impaired, or mentally or physically incapacitated. Signs that a person is intoxicated, incapacitated, or otherwise unable to give consent include, but are not limited to, slurred speech, loss of coordination, passing out, vomiting, and a visual or verbalized feeling of nausea.
- **Both partners must be equally free to act.** The decision to be sexually intimate must be made without coercion or force. Coercion or force includes conduct, intimidation, or express or implied threats of physical or emotional harm that would reasonably place an individual in fear of actual, immediate, or future harm and that is used to persuade or compel someone to engage in sexual conduct.

### **Complainant**

A complainant is an individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

### **Respondent**

A respondent is an individual who has been reported to be the perpetrator of conduct that could constitute a violation of this policy.

## **7. REPORTING**

### **Reporting vs. Filing a Formal Complaint**

The University encourages any student or employee who has experienced any conduct prohibited by this policy to report such conduct immediately and in accordance with the procedures detailed below. Any student who has witnessed or become aware of any conduct prohibited by this policy should report such conduct immediately and in accordance with the procedures detailed below. Employees who become aware of an alleged violation of this policy are required to report such conduct immediately to the Title IX Coordinator, unless there is a legal privilege of confidentiality.

While the University strongly encourages everyone to report incidents of conduct prohibited by this policy, it recognizes an alleged victim's right to decline such reporting or the filing of a formal complaint. Nonetheless, if the University is made aware of an allegation of conduct that is prohibited by this policy, the University may have an obligation to investigate and/or take action in response to that conduct, with or without the cooperation of the alleged victim.

Upon receipt of a report to the University, the Title IX Coordinator will discuss availability of supportive measures with the alleged victim as well as explain the process for filing a formal complaint. The complainant will be provided with a copy of this policy and/or other written statement of their rights, reporting options and resources. (A copy of the University's ["Title IX:](#)

[Rights, Reporting and Resources](#)” informational pamphlet is available on the University’s website and can be located by searching “Title IX”.)

Making a report to the University is different from filing a formal complaint. Making a report to the University will not, by itself, trigger the University’s investigation and/or formal complaint resolution processes. Only the filing of a formal complaint will trigger the University’s investigation and formal complaint resolution processes. The University will take disciplinary action against a respondent only if there is an adjudication of responsibility as a result of the formal complaint resolution process (or after an agreed resolution has been reached).

Please note that a report which does not identify the alleged victim may hinder or prevent the University’s ability to take further steps in response to the report, including, but not limited to, providing the alleged victim (or respondent) with supportive measures.

Crimes (or any conduct prohibited by this policy which a student may believe is a crime) in progress should be reported immediately to the MSJ Police Department at 513-244-4226 or dial 0 from any campus phone.

### **Reporting Sex Discrimination (Including Sexual Misconduct), Interpersonal Violence, or Retaliation<sup>i</sup>**

Any student or employee who has been the victim of, witnessed, or become aware of sex discrimination, sexual harassment, sexual assault, interpersonal violence, or retaliation should report such conduct to the following offices:

- Criminal Report
  - MSJ Police Department, 513-244-4226 or dial 0 from any campus phone; additional information regarding reporting emergencies can be found on the MSJ Police Department Webpage
- Institutional Report
  - Paige Ellerman, Vice President of Compliance, Risk, and Legal Affairs/Title IX Coordinator, 513-244-4393, [Paige.Ellerman@msj.edu](mailto:Paige.Ellerman@msj.edu), or submit a report using the [Title IX Reporting form](#) available on the University’s website or by searching the site for “report an incident” or “Title IX”).

A student or employee may pursue either or both the University’s resolution process and the criminal/law enforcement process.

### **Anonymous Reporting**

Reports of violations of this policy can be made anonymously by calling or texting 513-244-TIPS or emailing 244TIPS@msj.edu. These anonymous reporting options are available 24 hours a day/365 days a year.

Please note that these anonymous reporting options are not intended for any immediate safety or emergency situations. All immediate safety or emergency situations should be reported immediately to the MSJ Police Department at 513-244-4226 or dialing 0 from any campus phone.

### **Campus Security Authorities**

Reports of any type of sex discrimination, sexual harassment, sexual assault, interpersonal violence or retaliation can also be made to any of the University's designated Campus Security Authorities (CSAs). The University's designated CSAs includes:

- MSJ Police Department, 513-244-4226 or dial 0 from any campus phone; additional information regarding reporting emergencies can be found on the [MSJ Police Website](#).
- Wellness Center-Counseling and Health Services, Wellness Suite, Harrington Center, 513-244-4949
- Vice President Compliance, Risk, Legal Affairs/General Counsel/Title IX Coordinator, Paige Ellerman, Administration Building, 513-244-4393
- Dean of Students, Janet Cox, Office of Student Affairs, 513-244-4466
- Chief Human Resources Officer, Teri Compton, Office of Human Resources, 513-244-4979
- Director of Residence Life, Rhayshaun Isreal, 1<sup>st</sup> Floor Seton Center, 513-244-4465
- Resident Assistants – Reports from RAs will be forwarded to the MSJ Police Department through the Office of Residence Life
- Chief Mission Officer, Sister Karen Elliott, C.PP.S., D.Min., Office of Mission & Ministry, 513-244-4844
- Assistant Director of Mission Integration, Michelle Arnold, Office of Mission & Ministry, 513-244-4866
- Associate Director, Talent and Compliance, Human Resources, Ashley Barnett, Office of Human Resources, 513-244-4861
- Assistant Dean for Student Engagement and Leadership, Summer Spille, Harrington Center, 513-244-4627
- Athletic Director, Melanee Wagener, Sports Complex, 513-244-8585
- Associate Athletic Director, Joe Sparhawk, Sports Complex, 513-244-4876
- Athletic Coaches for all University collegiate sports, Sports Complex, 513-244-8585

More information about the responsibilities of CSAs is contained in the next section of this policy.

### **Confidentiality and Support**

The University may, to the extent permitted by law, honor a request by a complainant that no investigation be pursued. Confidentiality requests should be made directly to Paige Ellerman, Vice President of Compliance, Risk, and Legal Affairs/Title IX Coordinator, 513-244-4393, [Paige.Ellerman@msj.edu](mailto:Paige.Ellerman@msj.edu).

If a complainant requests that the University not reveal the complainant's name to the respondent and/or declines to file a formal complaint, this may limit the University's ability to respond fully to the incident, including pursuing disciplinary action against the respondent. However, in order to ensure a safe and nondiscriminatory environment for all students or if required to report the incident by law, the University may not be able to honor a request for confidentiality. Regarding its obligation to ensure a safe and nondiscriminatory environment, a complainant's request for confidentiality will be determined after considering factors such as the seriousness of the alleged



incident, the ages of the individuals involved, other complaints that may have been filed against a respondent, and a respondent's legal right to receive information maintained by the University as an education record.

Additionally, the University has a duty to complete certain publicly available recordkeeping, including reporting and disclosing information about certain crimes pursuant to a federal law known as the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the "Clery Act"). The University is also obligated to issue timely warnings of crimes enumerated in the Clery Act occurring within relevant geography that represent a serious or continuing threat to students and employees, except in those circumstances where issuing such a warning may compromise current law enforcement efforts or when the warning itself could potentially identify the reporting individual. Duties under the Clery Act will not require the University to report or disclose a complainant's personally identifying information.

Further, there may be situations where disclosing information about a complainant (or respondent) is necessary to provide a safe and non-discriminatory environment and/or to provide any supportive measures. The Title IX Coordinator will determine what information about an individual needs to be disclosed and to whom this information will be disclosed. Unless extenuating circumstances exist, the individual will be informed before sharing personally identifying information that the University believes is necessary to provide a safe and non-discriminatory environment and/or to provide any supportive measures.

If a student or employee tells a CSA about a criminal incident that was not reported to the MSJ Police Department, the CSA is required to report the information to MSJ Police Department. CSAs are also required to report the incident to the Title IX coordinator, who will contact the alleged victim to discuss the availability of supportive measures, the process for filing a formal complaint, and confidentiality considerations and who will provide a copy of this policy and/or other written statement of the individual's rights, reporting options and resources, as set forth above. The only exception is Wellness Center professional personnel who may serve as confidential reporting resources under limited circumstances, as discussed below.

Students may seek support from the University's Wellness, Counseling and Health Services Center. For more information please use the following link to the [MSJ Wellness, Counseling and Health Services Center](#) on the University's website (or search the site for "Wellness Center"). Counselors and/or licensed health care professionals such as nurses and physicians are available to students through the Center. These trained professionals can provide students with counseling, information, and support in a confidential setting. Information shared by a student with a confidential resource at the Center will not be disclosed to anyone else, including the University, except under limited circumstances. Incidents reported to a confidential resource will not be included in the University's annual crime statistics. These confidential resources available at the Center will not share information about a student (including whether that individual has received services) without the student's express permission, unless there is a continuing threat of serious harm to the individual patient/client or to others or there is a legal obligation to reveal such information. The support service providers are also available to help a student make a report to the University.

For employees, support from healthcare professionals may be available through the TriHealth Employee Assistance Program (EAP). The EAP is a benefit provided to all full-time and pro rata faculty and full-time, pro rata, and benefit-eligible part-time staff and members of their immediate households. The EAP may provide employees with assessment, short-term counseling, referral and follow up services. All EAP services are offered to eligible faculty, staff and household members free of charge. The TriHealth EAP can be contacted at 513-891-1627, at 1-800-642-9794, or at [www.TriHealthEAP.com](http://www.TriHealthEAP.com). Information shared by an employee with a confidential resource through the EAP will not be disclosed to anyone else, including the University, except under limited circumstances. Incidents reported to a confidential resource through the EAP will not be included in the University's annual crime statistics. These confidential resources available through the EAP will not share information about an employee (including whether that individual has received services) without the employee's express permission, unless there is a continuing threat of serious harm to the individual patient/client or to others or there is a legal obligation to reveal such information.

An alleged victim is encouraged to make a report even if the alleged victim is not seeking disciplinary action against the respondent. The University will make every effort to respect a complainant's autonomy in determining how to proceed. Supportive measures and resources are always available to an alleged victim regardless of the chosen course of action. Receiving a report of an incident permits the University to keep records of reported incidents and determine the appropriate response and the potential need to alert the University community to potential danger. Reported incidents will also be included in the University's annual crime statistics as required.

### **Supportive Measures**

As appropriate, the Title IX Coordinator will provide supportive measures to the complainant and the respondent. Supportive measures include non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or deter conduct in violation of this policy.

Supportive measures may include but are not limited to counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

The Title IX Coordinator will be responsible for coordinating effective implementation of supportive measures. Individuals requesting additional supportive measures or experiencing difficulty with supportive measures that have been approved should immediately contact the Title IX Coordinator. Supportive measures will be available to a complainant regardless of whether the complainant chooses to file a formal complaint or proceed with an investigation and/or hearing. Supportive measures will also be available to respondents. The University will maintain as

confidential any supportive measures provided to a complainant or respondent, to the extent that maintaining confidentiality would not impair the ability of the University to provide the supportive measures.

An individual may also consider seeking a protection or restraining order through a court of law. A protection or restraining order is a temporary order intended to help provide safety and protection from other individuals. If you have a protection or restraining order against someone and that person violates the order in any way, law enforcement may be able to arrest that person and charge that person with a violation of the order. If needed and to the extent possible, the University will provide assistance in obtaining a protection order. To the extent possible, any such protective measures will be confidential. **Please contact the Title IX Coordinator for more information about these protective measures, including obtaining contact information for law enforcement agencies and/or the prosecutor's office.**

### **Other Available Resources**

Any complainant and respondent will be notified upon request regarding medical, counseling, victim advocacy support, respondent advisor support, legal assistance, visa and immigration assistance, student financial aid assistance, and pastoral resources available through the University or through external referral sources.

### **Good Samaritan/Amnesty Policy**

The University values a safe environment conducive to learning and is committed to ensuring the safety and well-being of each student and employee. The University is also committed to providing guidance so that all members of the University community develop a responsible approach to social challenges, including whether to use alcohol, how to do so in moderation, and how to comply with local, state, and federal laws governing alcohol consumption.

Additionally, the University encourages reporting of conduct prohibited by this policy and seeks to remove any barriers to making a report. The University recognizes that an individual who has been drinking alcohol or using drugs at the time of an incident may be hesitant to make a report and/or file a formal complaint because of potential consequences for the individual's own conduct. An individual that reports conduct prohibited by this policy, either on the individual's own behalf or as a witness, will not be subject to disciplinary action by the University for the individual's own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violation did not and does not place the health or safety of any other person at risk.

### **Emergency Removal and Administrative Leave**

The University may remove a respondent from the University's education programs and activities on an emergency basis where, after undertaking an individualized safety and risk analysis, the University determines that an immediate threat to the physical health or safety of any student or other individual arising from the alleged violation(s) of this policy justifies removal. If the University makes such a determination, it will notify the respondent in writing and provide the respondent an opportunity to immediately challenge that decision.

The University retains full discretion to place a non-student employee respondent on administrative leave during the pendency of the formal complaint resolution process.

## **8. FILING A FORMAL COMPLAINT**

### **Criminal Complaints**

Criminal complaints follow criminal processes carried out by local law enforcement entities, which may include a police investigation, a referral to the Hamilton County Prosecutor's Office, and/or the criminal court system for resolution.

### **Institutional Complaints (Formal Process)**

To proceed with seeking an investigation and adjudication of an alleged violation(s) of this policy, the complainant or (in certain limited circumstances, the Title IX Coordinator) must file a "formal" complaint.

A formal complaint is a document that is written and signed (physically, digitally, or by some other means that sufficiently identifies the author) by the complainant which alleges a violation of this policy and seeks a formal University investigation of the incident(s). The complaint should include as much detail as the complainant can recall about the incident(s) as well as any evidence the complainant believes will support the allegations in the formal complaint. A complainant may file a formal complaint with the Title IX Coordinator in person, by mail, or by email.

If an alleged victim declines to file a formal complaint, the Title IX Coordinator may file a formal complaint when the Title IX Coordinator determines that an investigation is necessary to ensure a safe, equitable, and non-hostile work and/or educational environment. A Title IX Coordinator's formal complaint must also be written and signed, but the Title IX Coordinator does not become the complainant or a party to the resolution process by virtue of filing the formal complaint. This means the alleged victim will still receive all of the same notices and be entitled to the same rights and responsibilities of a complainant/party who filed a formal complaint, discussed in this policy.

The University's investigation of a formal complaint is different and separate from a criminal complaint investigation by any law enforcement agency. An ongoing law enforcement investigation does not relieve the University of its obligation to investigate a formal complaint. In cases involving potential criminal conduct, University personnel must determine, consistent with federal, state, and local law, whether appropriate law enforcement agencies or other authorities should be notified. Conduct may constitute a violation of this policy and result in disciplinary action by the University even if a law enforcement agency and/or court of law determines that the conduct did not constitute a crime.

If the MSJ Police Department receives a report of conduct potentially in violation of this policy involving students and employees, the MSJ Police Department will notify the Title IX Coordinator.

### **Notice of Allegations and a Written Statement of Rights**

Upon receipt of any formal complaint, the Title IX Coordinator will provide both parties with a notice of allegations and a copy of this policy and/or other written statement of their rights, reporting options and resources. (A copy of the University's ["Title IX: Rights, Reporting and](#)

[Resources](#)” informational pamphlet is available on the University’s website and can be located by searching “Title IX”.) The University is required to provide the respondent with the name of the complainant and information regarding the nature of the allegations to respond to the complaint. The notice of allegations will contain a copy of the formal complaint; a copy of this policy with a specific directive to review this entire section relating to formal complaints and the resolution of such complaints; and a reminder that deliberately or knowingly providing false information to those administering this policy may result in disciplinary action, but that such a finding will not be made solely on the determination regarding responsibility. If in the course of an investigation, the University decides to investigate allegations that are not included in the original notice of allegations, the University will provide an additional or updated notice identifying the additional allegations.

Before any investigation begins, the respondent will be provided fourteen (14) days to prepare and submit a written response to the formal complaint. Any such written response will be submitted to the Title IX Coordinator and will be shared with the complainant in accordance with the procedures set forth herein

The parties have a right to have an advisor present with them throughout all stages of the University’s resolution process. The party’s advisor may be an attorney, but is not required to be. If a party cannot afford to retain an advisor, the University will provide an advisor for that party.

Complainants and respondents, as well as their advisors, are entitled to and will be provided an opportunity to inspect and review the same information and evidence. This includes any information, evidence, or allegation learned as a result of the Title IX Coordinator’s investigation into the formal complaint.

Respondents are entitled to a presumption of non-responsibility throughout the process unless they are adjudicated through this formal complaint resolution process as responsible for a violation of this policy.

All parties will be provided written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings in which they are invited or expected to participate, with sufficient time for the party to prepare to participate. Each party is expected to contact the Title IX Coordinator as soon as possible in the event of a scheduling conflict or other concern related to the details of these arrangements.

### **Informal Resolution of Complaints**

In appropriate circumstances, and with the written and voluntary consent of the complainant and respondent, the Title IX Coordinator may attempt informal methods to resolve a formal complaint of an alleged policy violation without the need for additional proceedings. When informal resolution is pursued, the Title IX Coordinator will provide written notice to the complainant and respondent regarding (1) the allegations; (2) the voluntary nature of the informal resolution process and the availability of a formal investigation at all times; and (3) any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared. The objective of the informal process will be to resolve the complaint to the mutual satisfaction of the parties involved, if possible. If the

informal resolution process is attempted, efforts will be made to conclude it within twenty-one (21) days of when the Title IX Coordinator issues the notice of allegations.

The informal resolution process is not available where the formal complaint alleges that an employee has engaged in conduct in violation of this policy toward a student.

### **Investigation of Complaints**

In instances where informal methods of resolution are inappropriate or declined, an investigation of the formal complaint will be conducted. At all times during this internal resolution process, the University will have the burden of proof and the burden of gathering evidence. However, the University's ability to obtain relevant information and evidence will turn on the willingness of the parties and/or witnesses to engage in the investigatory process. For example, access to medical records or other sensitive or confidential documents can often only be obtained with the person's voluntary, written consent.

Throughout the investigation, each party will have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

No party will be restricted in the ability to discuss the allegations under investigation or to gather and present relevant evidence. Complainants and respondents, as well as their advisors, are entitled to and will be provided an opportunity to inspect and review the same information and evidence. This includes evidence directly related to the allegations that the University may not intend to rely on in determining responsibility as well as any inculpatory or exculpatory evidence whether obtained from a party or other source.

While all investigations will vary due to the individual circumstances surrounding the particular formal complaint, investigations under this policy will typically involve the following:

1. **Title IX Team Assignment**: Investigations are coordinated by the Title IX Coordinator. The Title IX Coordinator will assign University employees who are trained to conduct each stage of the formal complaint resolution process.

Prior to the start of a formal investigation, the Title IX Coordinator will send a written "Initial Title IX Team Assignment" to the complainant(s) and respondent(s), which will include the names of the Title IX Team Members assigned to the particular complaint and each Title IX Team Member's assigned role, as follows:

- Title IX Investigator(s) (more than one member may be assigned)
- Adjudication Hearing Panel (three members)
- Title IX Appellate Official
- Alternate (one member, in the event that any assigned Title IX Team Member becomes unavailable)

Before assigning someone to the Title IX Team, the Title IX Coordinator will assess the individual for a potential conflict of interest, bias, or prejudice. If any complainant and/or a respondent believes that any Title IX Team Member assigned to

the formal complaint has a conflict of interest, bias, or prejudice, the party must contact the Title IX Coordinator in writing no more than seven (7) days (excluding University holidays) of receiving the Initial Title IX Team Assignment with an explanation of the Title IX Team Member's alleged conflict of interest, bias, or prejudice (a "Conflict of Interest Notice"). In the event that the Title IX Coordinator timely receives a Conflict of Interest Notice, the Title IX Coordinator will make any substitutions the Title IX Coordinator deems appropriate.

Similarly, if an assigned Title IX Team Member believes that the particular complaint poses a conflict of interest for the individual, the Title IX Team Member will contact the Title IX Coordinator immediately and the Title IX Coordinator will make any substitutions the Title IX Coordinator deems appropriate.

After the Conflict of Interest Notice period has passed, the Title IX Coordinator will send a written "Final Title IX Team Assignment" to the complainant(s) and respondent(s).

2. Title IX Investigator(s) Notification: The Title IX Investigator(s) will send written notification to any complainant and the respondent that the formal investigation has commenced.
3. Interviews: The Title IX Investigator(s) will seek to conduct interviews of the complainant(s), the respondent(s), and any witnesses identified by those parties.
4. Consideration of Evidence by Title IX Investigator(s): The Title IX Investigator(s) will gather and examine relevant documents or evidence (e.g., law enforcement investigatory records, student and/or personnel files, etc.). Both the complainant and respondent will be asked to provide a list of possible witnesses as well as any written or physical evidence (e.g., text messages, social media postings, emails, photos, medical records, etc.) that they wish to be considered by the Title IX Investigator(s).
5. Opportunity to Respond: The parties will be given a meaningful opportunity to respond to any interviews conducted or evidence directly related to the allegations gathered prior to conclusion of the investigation. Upon execution by the party and party's advisor of a nondisclosure agreement not to disseminate any of the evidence or use it for any other purpose, the Title IX Investigator(s) will send all evidence directly related to the allegations to the parties and their advisors in either electronic or hard-copy format. The parties will have ten (10) days to inspect, review, and submit any written response to the evidence, which the Title IX Investigator(s) will consider prior to completion of the investigation.
6. Pre-Hearing Dismissal: If, after the investigation is concluded, the Title IX Investigator(s) determines that the conduct alleged in the formal complaint, even if proved, would not constitute a violation of this policy, did not occur within the University's education programs or activities, or did not occur within the United States, the formal complaint will be dismissed. The Title IX Coordinator will promptly send written notice of the dismissal and reason(s) therefor simultaneously to

the parties. Such a dismissal may be appealed in accordance with the appeal procedures set forth in a later section of this policy. (Please note that pre-hearing dismissal under this policy does not bar appropriate disciplinary action or procedures in accordance with another University policy.)

7. Prepare Investigation Report: If pre-hearing dismissal is not warranted, the Title IX Investigator(s) shall prepare a written Investigation Report complete with a summary of interviews, relevant documents, and next steps.
8. Distribute Investigation Report: The Title IX Investigator(s) shall provide any complainant and respondent with access to the Investigation Report as well as any documents or evidence gathered by the Title IX Investigator(s) that were used to prepare the Investigation Report to the parties.

Efforts will be made to complete a formal investigation within sixty (60) days of receiving the formal complaint.

### **Adjudication Hearing**

Upon receipt of the written investigation report, the Title IX Coordinator will contact all parties in writing to notify them that the three (3) previously assigned Adjudication Hearing Panel members will preside over the Adjudication Hearing, and to offer all parties the opportunity to request one (1) pre-hearing meeting with the Title IX Coordinator.

Pre-hearing meetings are not mandatory and are designed to allow the parties to ask questions regarding the Adjudication Hearing as well as to again review the Investigation Report or any documents or evidence gathered and used to prepare the Investigation Report.

After all of the requested pre-hearing meetings conclude (or after they are declined), the Title IX Coordinator will notify the parties of the date, time, and location of the Adjudication Hearing. The parties will receive at least ten (10) days' notice (excluding University holidays) of the Adjudication Hearing.

At least five (5) days (excluding University holidays) prior to the scheduled Adjudication Hearing, each party must identify in writing to the Title IX Coordinator any and all witnesses and evidence the party intends to present at the Adjudication Hearing. Unless extenuating circumstances exist as determined by the Title IX Coordinator, witnesses and evidence that were not disclosed or identified to the Title IX Investigator may not be presented at the Adjudication Hearing. The Title IX Coordinator will promptly notify each party of the other party's list of witnesses and evidence for the Adjudication Hearing.

Adjudication Hearings are live and closed to the public. The University will entertain requests for separate rooms for the Adjudication Hearing. The University will strive to accommodate concerns for personal safety, well-being, and/or confrontation among the complainant, the respondent(s) and other witnesses by using physical or technological means that still enables the Adjudication Hearing Panel and the parties simultaneously to see and hear the party or the witness answering questions.



Each party is permitted to have that individual's advisor present. The Title IX Investigator(s) shall be present at the hearing.

At the Adjudication Hearing, each party will be permitted to give an opening statement. Each party will then be permitted to present relevant evidence and/or witnesses (fact and expert). If a party or witness voluntarily agrees to submit to cross-examination at the live Adjudication Hearing, a party's advisor will be permitted to pose relevant questions and follow-up questions of the other party and/or the other party's witnesses. Such cross-examination will be conducted directly, orally, and in real time by the party's advisor (or a member of the panel may pose the party's questions if that party chose not to bring an advisor), and not the party personally.

All evidence gathered during the investigation will be made available to the parties for potential use during the hearing. The Adjudication Hearing Panel will objectively evaluate all relevant evidence – including both inculpatory and exculpatory evidence. Any credibility determinations made by the Hearing Panel will not be based on a person's status as a complainant, respondent, or witness. Before a party or witness answers a cross-examination question, the Adjudication Hearing Panel will determine whether the question is relevant and explain any decision to exclude a question as not relevant. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

In the event a party or witness refused or is unable to attend or submit to cross-examination at the live Adjudication Hearing, the Adjudication Hearing Panel may nonetheless allow the live Adjudication Hearing to proceed. The attendance and full participation of parties and witnesses at a live Adjudication Hearing helps ensure that the Adjudication Hearing Panel fairly and accurately adjudicates the complaint. But, in making findings and determinations, the Adjudication Hearing Panel may, in its discretion, consider and give weight to statements of parties and witnesses who refuse or are unable to attend or submit to cross-examination at the live Adjudication Hearing, including, but not limited to, statements contained in investigative records, police reports, medical records (to the extent permitted by law), court filings and judgments, and any pertinent communications sent or made at a time relevant to the allegations in a complaint, which may include during the investigation of those allegations. In such cases, the Adjudication Hearing Panel has the authority to determine what weight, if any, to assign to the statements of parties or witnesses who refuse or are unable to attend or submit to cross-examination at the live Adjudication Hearing. In determining what weight to assign to these statements, beyond the statements' reliability and credibility, the Adjudication Hearing Panel may consider the reason(s) why the party or witness refused or was unable to attend or submit to cross-examination at the live Adjudication Hearing. If the Adjudication Hearing Panel decides to assign any weight to the statements of parties and witnesses who refuse or are unable to attend or submit to cross-examination at the live Adjudication Hearing, the Adjudication Hearing Panel should explain in its written determination its basis for considering such statements. However, under no circumstances may the Adjudication Hearing Panel draw an inference about the

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

The Adjudication Hearing Panel will not require, allow, rely on, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

To conclude the Hearing, each party will be permitted to make a closing statement.

Within seven (7) days (excluding University holidays) of the conclusion of the Adjudication Hearing, the Adjudication Hearing Panel will issue a written "Hearing Panel Decision." The Adjudication Hearing Panel will use a preponderance of the evidence (i.e., "more likely than not") standard to determine whether or not an alleged policy violation occurred. The decision need not be unanimous. Where applicable, the written Hearing Panel Decision will include identification of the allegations potentially constituting a policy violation; a description of the procedural steps taken from receipt of the formal complaint through the hearing; findings of fact and conclusions applying the policy to those facts; the rationale for the finding related to each allegation; any disciplinary sanctions on the respondent; any remedies designed to restore or preserve equal access to the University's education programs and activities to the complainant; and the permissible bases for appeal.

The Adjudication Hearing Panel may consider prior policy violations, among other things, when considering the level of discipline.

The Title IX Coordinator will promptly and simultaneously provide written notice to the parties of the Hearing Panel Decision.

A Hearing Panel Decision, including sanctions or disciplinary action, is final unless the Hearing Panel Decision is timely appealed under this policy. If an appeal is timely submitted, any sanctions or discipline will be stayed until resolution of the appeal process.

The University will record the live hearing through audio recording, audiovisual recording, or transcript, and make it available to the parties for inspection and review.

### **Appeals**

Both the Complainant and Respondent have the right to appeal a pre-Hearing dismissal and/or the Hearing Panel's Decision within seven (7) days of the written decision. Appeals must be submitted in writing to the previously assigned Title IX Appellate Official.

The only four grounds of appeal from the Hearing Panel's Decision are: (1) new evidence that was not reasonably available at the time the determination was made and that could affect the outcome of the matter; (2) procedural irregularity that affected the outcome of the matter; (3) the Title IX Coordinator, the Investigator, and/or the Hearing Panel had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter; and (4) the discipline/sanction is substantially disproportionate to the Hearing Panel's findings.

The only four grounds of appeal from an Investigator's Pre-Hearing Dismissal Decision are: (1) new evidence that was not reasonably available at the time the decision was made and that could affect decision; (2) procedural irregularity that affected the decision; (3) the Title IX Coordinator or the Investigator had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the decision; and (4) the decision is not supported by the evidence gathered in the investigation. .

If either party timely appeals a pre-Hearing dismissal or a Hearing Panel Decision, the other party will have seven (7) days (excluding University holidays) from receipt of a copy of the appeal to submit a "Written Opposition to Appeal" to the Title IX Appellate Official. Upon receipt of the Written Opposition to Appeal or the passing of the timeframe allowed to submit a Written Opposition to Appeal, the Title IX Appellate Official will consider the appeal and will issue a "Decision on Appeal" within fourteen (14) days.

The Title IX Appellate Official has the authority to determine that appeal criteria have not been met, to affirm the decision, reverse the decision, remand the matter to an Investigator or Adjudication Hearing Panel to consider additional evidence or remedy a procedural error, or alter the discipline/sanctions that were recommended in the Hearing Panel Decision. Any Decision on Appeal will be issued in writing to both parties and is final.

### **Timeframes**

All of the timeframes set forth in this policy related to the University's investigation or resolution processes for a formal complaint may be extended by the Title IX Coordinator (or designee) upon a showing of good cause. Any party's request for an extension of time must be submitted to the Title IX Coordinator and may be granted or denied in the Title IX Coordinator's sole discretion. Good cause may include, but is not limited to, the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. All parties involved will be promptly notified of any extension and provided the reason(s) for the extension.

## **9. POSSIBLE DISCIPLINE/SANCTIONS**

If it is determined that an employee of the University has engaged in conduct in violation of this policy, the employee will be promptly disciplined, up to and potentially including termination of employment, depending on the seriousness of the offense and individual circumstances. Possible sanctions and corrective actions include, but are not limited to, discrimination or harassment education, counseling, reassignment, no contact orders, demotion, suspension, non-reappointment, and termination from employment.

If it is determined that a student has engaged in conduct in violation of this policy, the student will be promptly disciplined with penalties up to and including suspension or dismissal from the University. Other sanctions include, but are not limited to, disciplinary warning, disciplinary probation, disciplinary probation with restrictions, no contact orders, fines, restitution, notification to others, educational/work assignment/community service, counseling, loss of privileges, restricted access, room transfer, termination of housing contract, or mandatory withdrawal from University housing.

Where a student or employee has been found to have engaged in conduct in violation of this policy, the University will take appropriate steps to prevent recurrence and to correct discriminatory effects on the complainant, the campus, and others, as necessary.

## **10. KNOWINGLY PROVIDED FALSE INFORMATION**

If it is determined by the University in its sole discretion that any individual involved in an investigation of a potential violation of this policy has deliberately or knowingly provided false information to those administering this policy, the individual will be subject to discipline, up to and including termination of employment or dismissal from the University.

## **11. RIGHT TO FILE CRIMINAL COMPLAINT AND/OR WITH A GOVERNMENT AGENCY**

Nothing in this policy should be construed as impeding or prohibiting an employee or student from pursuing a criminal complaint with the appropriate internal or external law enforcement agency or in filing a complaint with the appropriate external governmental agency. Although an employee or student with a concern or complaint is encouraged to attempt to resolve the grievance within this procedure when appropriate, each individual has the right to file a grievance/charge directly with the Department of Education's Office for Civil Rights, the Ohio Civil Rights Commission, or any other applicable state or federal agency.

Laws and regulations prohibiting sex discrimination, sexual misconduct, interpersonal violence, and retaliation in institutions of higher education include Title VI and Title VII of the Civil Rights Act of 1964, and Title IX. The Campus Sexual Violence Elimination Act (SaVE Act) amends the Clery Act.

## **12. EDUCATION, TRAINING AND RESOURCES**

The University offers a variety of education, training and support resources to students and employees related to sex discrimination, interpersonal violence and retaliation. Information about education and training provided by the University can be found in the [Sex Discrimination, Sexual Misconduct and Interpersonal Violence Policy](#). Information about additional resources for students and employees related to sex discrimination, sexual misconduct, interpersonal violence and retaliation can be found in the [Sexual Misconduct Brochure](#).

The Title IX Coordinator, Investigators, Hearing Panel Members, Appellate Officials, and any individuals who facilitate informal resolution processes will receive training on the definitions in this policy; the scope this policy; how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes; how to serve impartially, including by avoiding prejudgment of the facts at issue; conflicts of interest and bias; technology used at a live hearing; issues of relevance of questions and evidence, including when questions and evidence about when sexual predisposition or prior sexual behavior are not relevant; and on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Any materials used to train such individuals will not rely on sex stereotypes and will promote impartial investigations and adjudications of formal complaints. All training materials are available on the University's website.

If your report/complaint involves discriminatory, harassing, or retaliatory conduct based on race, color, national origin, religion, age, disability, or another legally protected status, please refer to the University's Equal Opportunity and Non-Discrimination Policy. If your report/complaint relates to student disability accommodations, please refer to the University's Student Accommodation Grievance Procedure.

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<sup>i</sup> If your report or complaint involves discriminatory, harassing, or retaliatory conduct based on race, color, national origin, religion, age, disability, or another legally protected status (including conduct outside the scope of Title IX), please refer to the University's [Equal Opportunity and Non-Discrimination Policy](#). If your report or complaint relates to student disability accommodations, please refer to the University's [Student Accommodation Grievance Procedure](#).