**INTERIM**

**MHU POLICY ON SEX/GENDER HARASSMENT, DISCRIMINATION AND MISCONDUCT**

**INTRODUCTION**

Members of the Mars Hill University community, guests and visitors have the right to be free from all forms of sex/gender harassment, discrimination and misconduct, examples of which can 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. The university believes in zero tolerance for sex/gender-based misconduct. Zero tolerance means that when an allegation of misconduct is brought to an appropriate administrator’s attention, protective and other remedial measures will be used to reasonably ensure that such conduct ends, is not repeated, and the effects on the victim and community are remedied, including serious sanctions when a responding party is found to have violated this policy. This policy has been developed to reaffirm these principles and is intended to define community expectations and Mars Hill University’s model procedures.

The university’s sex/gender harassment, discrimination and misconduct policies are not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include controversial or sensitive subject matters protected by academic freedom. Academic freedom extends to topics that are pedagogically appropriate and germane to the subject matter of courses or that touch on academic exploration of matters of public concern.

The university uses the **preponderance of the evidence** (also known as “more likely than not”) as a standard for proof of whether a violation occurred. In campus resolution proceedings, legal terms like “guilt”, “innocence” and “burdens of proof” are not applicable, but the university never assumes a responding party is in violation of university policy. Campus resolution proceedings are conducted to take into account the totality of all evidence available, from all relevant sources.

In order for the University to consider a complaint for possible supportive measures, informal resolution, and/or investigation, *the complainant must file a written complaint with the Title IX Coordinator*.  Failure to file the complaint with the Title IX Coordinator relieves the College of the responsibility to offer supportive measures and/or consider the complaint for investigation.  Upon learning of a complaint of sexual harassment, through the complainant's written notice to the Title IX Coordinator, the College will offer supportive measures to both the complainant and respondent; will take immediate and appropriate steps to discuss appropriate options (e.g., supportive measures, informal resolution (e.g., mediation), or a formal complaint investigation and hearing), with the complainant; and take appropriate action to address the matter promptly and equitably.

**TITLE IX COORDINATOR**

The university’s Title IX Coordinator oversees compliance with all aspects of the sex/gender harassment, discrimination and misconduct policy. The Coordinator reports to the President of the University, and is housed in the office of Human Resources. Questions about this policy should be directed to the Title IX Coordinator. Anyone wishing to make a report relating to discrimination or harassment may do so by reporting the concern to the university Title IX Coordinator:

**Jennie Matthews**

Director of Human Resources / Title IX Coordinator

Nash Education Building Room 209

(828) 689-1179

jmatthews@mhu.edu

Individuals experiencing harassment or discrimination also have the right to file a formal grievance with government authorities:

Office for Civil Rights (OCR)

US Dept. of Health and Human Services - Southeast Region

61 Forsyth Street, S.W.

Atlanta, GA 30303-8909
Customer Response Center (800) 368-1019

Fax (202) 619-3818
TDD (800) 537-7697

Email: ocrmail@hhs.gov

In the event that an incident involves alleged misconduct by the Title IX Coordinator, reports should be made directly to the University President, Tony Floyd, J.D. at tony\_floyd@mhu.edu .

**OVERVIEW OF POLICY EXPECTATIONS WITH RESPECT TO PHYSICAL 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 sexually and what you don’t. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Previous consent does not imply consent to sexual activity in the future. Silence or passivity -- without actions demonstrating permission -- cannot be assumed to show consent. Consent, once given, can be withdrawn at any time. There must be a clear indication that consent is being withdrawn.

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. Coercion happens when someone is pressured unreasonably for sex.

Because alcohol or other drug use can place the capacity to consent 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.”

**Location of Title IX Incident & Policy Requirements**

As a recipient of Federal financial assistance, Mars Hill University is required to respond to formal complaints when sexual harassment occurs in the school’s education program or activity, against a person in the United States. Education program or activity includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by MHU. This applies to all of the education programs or activities, whether such programs or activities occur on-campus or off-campus. Incidents that fall outside of Title IX’s jurisdiction may be addressed in any manner MHU chooses, including providing supportive measures or pursuing disciplinary action.

**SEXUAL VIOLENCE -- RISK REDUCTION TIPS**

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

* If you have limits, make them known as early as possible.
* Tell a sexual aggressor “NO” clearly and firmly.
* Try to remove yourself from the physical presence of a sexual aggressor.
* Find someone nearby and ask for help.
* Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
* Give thought to sharing your intimate content, pictures, images and videos with others, even those you may trust. If you do choose to share, clarify your expectations as to how or if those images may be used, shared or disseminated.
* Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do.

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:

* Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
* Understand and respect personal boundaries.
* 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. Your partner’s consent should be affirmative and continuous. If there are any questions or ambiguity then you DO NOT have consent.
* 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.
* Don’t take advantage of someone’s drunkenness or altered state, even if they willingly consumed alcohol or other substances.
* Realize that your potential partner could feel intimidated or coerced by you. You may have a power advantage simply because of your gender or physical presence. Don’t abuse that power.
* Do not share intimate content, pictures, images and videos that are shared with you.
* Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
* Silence, passivity, or non-responsiveness cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

**SEXUAL MISCONDUCT OFFENSES INCLUDE, BUT ARE NOT LIMITED TO:**

1. **Sexual Harassment**
2. **Non-Consensual Sexual Contact (or attempts to commit same)**
3. **Non-Consensual Sexual Intercourse (or attempts to commit same)**
4. **Sexual Exploitation**
5. SEXUAL HARASSMENT

Sexual harassment is:

* unwelcome,
* sexual, sex-based and/or gender-based verbal, written, online and/or physical conduct.

Anyone experiencing sexual harassment in any University program is encouraged to report it immediately to the Title IX Coordinator. Remedies, education and/or training will be provided in response.

Sexual Harassment, as defined by the Office of Civil Rights, means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient 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 recipient’s education program or activity; or
3. “Sexual assault” as defined in 20 U.S.C s 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. § 12291(a)(10), “domestic violence” as defined in 34 U.S.C. § 12291(a)(8), or “stalking” as defined in 34 U.S.C. § 12291(a)(30).

Sexual harassment may be disciplined when it takes the form of quid pro quo harassment, retaliatory harassment and/or creates a hostile environment.

A hostile environment is created when sexual harassment is:

* sufficiently severe, or
* persistent or pervasive, and
* objectively offensive that it:
	+ unreasonably interferes with, denies or limits someone’s ability to participate in or benefit from the university’s educational and/or employment, social and/or residential program.

Quid Pro Quo Harassment is:

* Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature
* By a person having power or authority over another
* Submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual’s educational or employment progress, development, or performance.
* This includes when submission to such conduct would be a condition for access to receiving the benefits of any educational or employment program.

Examples include: an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention; to punish a refusal to comply with a sexual based request; to condition a benefit on submitting to sexual advances; sexual violence; intimate partner violence, stalking; gender-based bullying.

Some examples of possible Sexual Harassment include:

* A professor insists that a student have sex with him/her in exchange for a good grade.  This is harassment regardless of whether the student accedes to the request.
* A student repeatedly sends sexually oriented jokes around on an email list s/he created, even when asked to stop, causing one recipient to avoid the sender on campus and in the residence hall in which they both live.
* Explicit sexual pictures are displayed in a professor’s office or on the exterior of a residence hall door
* Two supervisors frequently ‘rate’ several employees’ bodies and sex appeal, commenting suggestively about their clothing and appearance.
* A professor engages students in her class in discussions about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class.  She probes for explicit details, and demands that students answer her, though they are clearly uncomfortable and hesitant.
* An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend, turning him into a social pariah on campus
* Male students take to calling a particular brunette student “Monica” because of her resemblance to Monica Lewinsky.  Soon, everyone adopts this nickname for her, and she is the target of relentless remarks about cigars, the president, “sexual relations” and Weight Watchers.
* A student grabbed another student by the hair, then grabbed her breast and put his mouth on it.  While this is sexual harassment, it is also a form of sexual violence.
1. *NON-CONSENSUAL SEXUAL CONTACT*

Non-Consensual Sexual Contact is:

• any intentional sexual touching,

• however slight,

• with any object,

**•** by a person upon another 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; or
* Any other intentional bodily contact in a sexual manner.
1. *NON-CONSENSUAL SEXUAL INTERCOURSE*

Non-Consensual Sexual Intercourse is:

• any sexual intercourse

• however slight,

• with any object,

• by a person upon another 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), no matter how slight the penetration or contact.
1. SEXUAL EXPLOITATION

Occurs when one person 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 person;
* Non-consensual digital, video or audio recording of nudity or sexual activity;
* Unauthorized sharing or distribution of digital, video or audio recording of nudity or sexual activity;
* Engaging in voyeurism;
* Going beyond the boundaries of consent (such as letting your friend hide in the closet to watch you having consensual sex);
* Knowingly exposing someone to or transmitting an STI, STD or HIV to another person;
* Intentionally or recklessly 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

ADDITIONAL APPLICABLE DEFINITIONS:

* **Complainant:** an individual who is alleged to be the victim of conduct that could constitute sexual harassment. Any third party, as well as the complainant, may report sexual harassment. Parents and guardians may not become complainants or respondents, but have a legal right to act on behalf of parties by filing formal complaints.
* **Consent:**
	+ Consent is
		- clear, and
		- knowing, and
		- voluntary [or affirmative, conscious and voluntary],
		- words or actions,
		- that give permission for specific sexual activity.
	+ 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 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.
	+ Consent can be withdrawn once given, as long as that withdrawal is clearly communicated.
	+ In order to give consent, one must be of legal age.
	+ Sexual activity with someone you know to be or should know to be incapacitated constitutes a violation of this policy.
		- Incapacitation can occur mentally or physically, from developmental disability, by alcohol or other drug use, or blackout.
		- The question of what the responding party should have known is objectively based on what a reasonable person in the place of the responding party, sober and exercising good judgment, would have known about the condition of the reporting party.
		- 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, unconsciousness, involuntary physical restraint, or from the taking of 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. More information on these drugs can be found at <http://www.911rape.org/>].
* **“Document filed by a complainant”:** A document or electronic submission that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.
* **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 overcomes free will or resistance or that produces consent (“Have sex with me or I’ll hit you. Okay, don’t hit me, I’ll do what you want.”).
	+ Coercion is unreasonable pressure for sexual activity. 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.
	+ NOTE: There is no requirement for a party to 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.
* **Formal Complaint:** A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment.
* **Respondent:** An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
* **Supportive measures:** Individualized services reasonably available, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.
* Use of alcohol or other drugs will never function to excuse any behavior that violates this policy.
* This policy is applicable regardless of the sexual orientation and/or gender identity of individuals engaging in sexual activity.

**OTHER MISCONDUCT OFFENSES (WILL FALL UNDER TITLE IX WHEN SEX OR GENDER-BASED)**

1. Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
2. Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of sex or gender;
3. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
4. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the university community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity;
5. Bullying, defined as
	1. Repeated and/or severe
	2. Aggressive behavior
	3. Likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally
	4. That is not speech or conduct otherwise protected by the 1st Amendment.
6. Intimate Partner Violence, defined as violence or abuse between those in an intimate relationship to each other,
	1. A boyfriend shoves his girlfriend into a wall upon seeing her talking to a male friend. This physical assault based in jealousy is a violation of the Intimate Partner Violence policy.
	2. An ex-girlfriend shames her female partner, threatening to out her as a lesbian if she doesn’t give the ex another chance. Psychological abuse is a form of Intimate Partner Violence.
	3. A graduate student refuses to wear a condom and forces his girlfriend to take hormonal birth control though it makes her ill, in order to prevent pregnancy.
	4. Married employees are witnessed in the parking garage, with one partner

slapping and scratching the other in the midst of an argument.

7. Stalking

* 1. Stalking 1:
		1. A course of conduct
		2. Directed at a specific person
		3. On the basis of actual or perceived membership in a protected class
		4. That is unwelcome, AND
		5. Would cause a reasonable person to feel fear
	2. Stalking 2:
		1. Repetitive and Menacing
		2. Pursuit, following, harassing and/or interfering with the peace and/or safety of another

8. Any other University policies may fall within this section when a violation is

motivated by the actual or perceived membership of the reporting party’s sex or

gender.

**RETALIATION**

Retaliation is defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity, subject to limitations imposed by the 1st Amendment and/or Academic Freedom. Retaliation against an individual for an allegation, for supporting a reporting party or for assisting in providing information relevant to an allegation is a serious violation of university policy.

**SANCTIONS**

The following sanctions may be imposed upon any member of the community found to have violated the Sex/Gender Harassment, Discrimination and Misconduct Policy. Factors considered in sanctioning are defined in the Student Handbook’s Code of Conduct, Faculty Handbook, Staff Handbook. The following are the typical sanctions that may be imposed upon students or organizations singly or in combination:

**Student Sanctions (listed below and defined in Student Handbook)**

* Warning
* Probation
* Suspension
* Expulsion
* Withholding Diploma
* Revocation of Degree
* Transcript Notation
* Organizational Sanctions
* Other Actions

**Employee Sanctions listed below and defined in Employee Handbook**

* Warning – Written or Verbal
* Performance Improvement Plan
* Required Counseling
* Required Training or Education
* Demotion
* Suspension without Pay
* Suspension with Pay
* Termination

**Sanctioning for Sexual Misconduct**

* Any person found responsible for violating the Non-Consensual Sexual Contact policy (where no intercourse has occurred) will likely receive a sanction ranging from probation to expulsion, depending on the severity of the incident, and taking into account any previous disciplinary violations.\*
* Any person found responsible for violating the Non-Consensual Sexual Intercourse policy will likely face a recommended sanction of suspension or expulsion (student) or suspension or termination (employee).\*
* Any person found responsible for violating the Sexual Exploitation or Sexual Harassment policies will likely receive a recommended sanction ranging from warning to expulsion or termination, depending on the severity of the incident, and taking into account any previous disciplinary violations.\*

\*The decision-making body reserves the right to broaden or lessen any range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior. Neither the initial hearing officers nor any appeals body or officer will deviate from the range of recommended sanctions unless compelling justification exists to do so.

**CONFIDENTIALITY, PRIVACY AND REPORTING POLICY**

**Confidentiality and Reporting of Offenses Under This Policy**

All university employees (faculty, staff, and administrators) are expected to immediately (within 48 hours) report actual or suspected discrimination or harassment to appropriate officials, though there are some limited exceptions. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality – meaning they are not required to report actual or suspected discrimination or harassment to appropriate university officials - thereby offering options and advice without any obligation to inform an outside agency or individual unless a victim has requested information to be shared.

Confidential reporters are trained professionals who can provide confidential support. These individuals are not required by the university to report any information to the Title IX Coordinator without your permission, though they may have certain reporting requirements pursuant to their own professional licensure requirements or code of ethics. The University’s confidential reporting sources are:

* University Wellness Center, Stephanie Shelton 828-689-1243
* Counseling Center, Phillip Brantley and Noreal Armstrong 828-689-1196; Judith Harris 828-1410; or counseling@mhu.edu
* Pastoral Counseling, Stephanie McLeskey and Andrew Hoots 828-689-1299 or 828-689-1664

Other resources exist for a victim to report crimes and policy violations and these resources will take action when an incident is reported to them. The following describes the two reporting options at Mars Hill University:

**Formal Reporting Options**

All university employees have a duty to report, unless they fall under the “Confidential Reporting” section above, within 48 hours of knowledge of a potential policy violation. Reporting parties may want to consider carefully whether they share personally identifiable details with non-confidential employees, as those details must be shared by the employee with the Title IX Coordinator. Employees must share all details of the reports they receive. Remedial actions may result without formal university action.

If a victim does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the victim may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. In cases indicating pattern, predation, threat, weapons and/or violence, the University will likely be unable to honor a request for confidentiality. In cases where the victim requests confidentiality and the circumstances allow the University to honor that request, the University will offer interim supports and remedies to the victim and the community, but will not otherwise pursue formal action. A reporting party has the right, and can expect, to have reports taken seriously by the University when formally reported, and to have those incidents investigated and properly resolved through these procedures.

Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told, including but not limited to: Vice President for Student Life, University Security, Student Success Team. Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party’s rights and privacy.

Reports to the Title IX Coordinator can be made via email, phone or in person at the contact information below:

**Jennie Matthews**

Nash Education Building Room 209

828-689-1197

jmatthews@mhu.edu

Failure of a non-confidential employee, as described in this section, to report an incident or incidents of sex or gender harassment or discrimination of which they become aware within 48 hours, is a violation of university policy and can be subject to disciplinary action for failure to comply with university policies.

**Investigative Process**

A detailed investigative process is included in Appendix A.

**Federal Timely Warning Reporting Obligations**

Victims of sexual misconduct should also be aware that university administrators 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 university will ensure that a victim’s name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger.

**Additional Policy Provisions**

False Reports :

University will not tolerate intentional false reporting of incidents. It is a violation of the S*tudent Code of Conduct* to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.

Appendix A

**Preliminary Investigative Process**

**Receipt of Initial Report -** If a complaint is reported to a responsible employee other than the university’s Title IX Coordinator, the person receiving the initial report shall notify the university’s Title IX Coordinator of the complaint within 48 hours of receipt of the report. If the Title IX Coordinator is alleged to have been involved in a violation, the complaint shall be reported to the Vice President for Student Life, who will fulfill the responsibilities of the Title IX Coordinator with regards to the complaint. Should a Complainant request that a complaint be kept confidential, the Title IX Coordinator will respect the Complainant’s request and do everything practicable to maintain confidentiality, though doing so may limit the university’s ability to respond to the complaint. However, the Title IX Coordinator must balance this request with the university’s responsibility to provide a safe and nondiscriminatory environment for all members of the university community.

The purpose of the preliminary inquiry is to determine reasonable cause, whether any of the Office of Civil Rights requirements for dismissal are present, suitability for informal resolution and supportive or interim measures.

**Notice of Complaint to Respondent & Opportunity for Response** - Within 5 days of receipt of a complaint, the Title IX Coordinator, with the assistance of other university officials, shall make a preliminary inquiry and initial determination as to whether or not the Grievance falls within the scope of these procedures and whether further investigation is necessary. If the Title IX Coordinator determines that further investigation regarding the complaint is necessary under these procedures, the Title IX Coordinator shall provide written notice of the reported complaint to the Respondent, either by providing the Respondent with a copy of the written initial report of the complaint, or by providing the Respondent with a summary of the allegations and requests made by the Complainant. In this notice, the Respondent shall be advised that a written Response to the Grievance may be filed with the Title IX Coordinator within 5 days of notice of the complaint. The Response, if any, should confirm or deny the factual allegations, and indicate the extent to which the complaint has merit. If the Respondent files a Response, the Title IX Coordinator shall provide a copy of the Response to the Complainant upon receipt.

**Interim Measures -** It is the goal of the University to investigate all complaints in a prompt and equitable manner. Accordingly, the university strives to complete and resolve a filed complaint within 60 business days or less (exclusive of any appeal). During the Preliminary Investigative process, the Title IX Coordinator, in consultation with senior administrators, may implement Interim Measures to ensure the safety of all members of the university community. By way of example, Interim Measures could include no-contact orders, changes in housing assignments, changes to course schedules, changes to work schedules or duties, counseling, health services, other support services, or temporary suspension. If Interim Measures are implemented, the Title IX Coordinator or a senior administrator shall notify the Complainant, the Respondent, and any other individual or entity affected by the Interim Measures, in writing. The following factors are considered when determining the appropriateness of Interim Measures: the seriousness of the allegations, scheduled interactions between the Grievant and the Respondent (e.g., courses, housing assignments, extracurricular activities), restraining orders or other civil protections, and the specific needs and requests of the Complainant. When implementing Interim Measures, the Title IX Coordinator will balance the need to ensure the safety of the Complainant and the university community with the need to minimize the impact on the Respondent.

**Informal Resolution -** Prior to any investigation, and at any time during the investigative process, the Title IX Coordinator may inquire of the parties if they wish to participate in informal resolution of the complaint. If, and only if, both the Complainant and the Respondent voluntarily agree to do so, the Title IX Coordinator or designee will meet with the parties and informally attempt to resolve the complaint. If the parties can reach an agreement, it shall be recorded in writing and signed by both the Complainant and Respondent, and no further action will be taken in connection with these Investigative Procedures. However, complaints alleging sexual assault or other sexual violence may not be resolved through this informal process, even with the parties’ consent. Further, all parties shall have the absolute right to end the informal resolution process at any time and return to, or begin, the formal stage of the investigative process under these Investigative Procedures.

**Formal Investigation Process**

**Appointment of Investigators -** Unless an informal resolution is pursued, the Title IX Coordinator will appoint an Investigator and an Assistant Investigator, both of whom have had training in civil rights investigations, within 5 business days of receipt of response from the Respondent, if any. The Title IX Coordinator will inform the Complainant and Respondent of these assignments in writing, to ensure that there are no conflicts of interest. Investigators are expected to complete all interviews, review all evidence, and complete an Investigation Report within 15 business days, unless, in the judgement of the Title IX Coordinator, additional time is required. If additional time is needed, the Title IX Coordinator will notify the Complainant and Respondent in writing of the date by which the investigation is expected to be completed.

**Interviews and Evidence -** During the investigation, the Investigator and Assistant Investigator will work as a team, reviewing the Complaint and the Response (if submitted), conducting interviews of both parties and relevant witnesses and collecting evidence. During interviews, both the Complainant and the Respondent have the right to have an advisor of their choice accompany them. All participants in interviews, including the Complainant, the Respondent, other witnesses, and any advisors, are required to maintain strict confidentiality about the interviews, sharing neither the Investigators’ questions nor their responses with others, unless they are given written consent to do so by the Title IX Coordinator. Evidence collected by the Investigators may include student or personnel files, photographs, videos, reports, law enforcement investigatory records, medical records (if provided by a patient), or other documents. Investigators have no legal power to compel individuals to participate in interviews or to subpoena records, but refusing to participate in an interview or share relevant evidence may be grounds for disciplinary actions.

**Investigation Report -** Upon concluding their investigation, the Investigator and Assistant Investigator will prepare a written Investigation Report that documents the violation alleged, the interviews conducted, and the evidence reviewed. Both parties will be provided an equal opportunity to inspect and review evidence that is “directly related” to the allegations. Parties have 10 days to review and submit a written response to any evidence, which must be considered by the investigators before finalizing their report. Final investigation report will be provided to both parties at least 10 days before any hearing to decide whether the respondent is responsible for the alleged policy violations.

**Formal Hearing Process –** Upon completion of the investigative process, a live Title IX hearing, including the opportunity for cross-examination of all witnesses by each party’s advisor, must occur in order to separate the investigative function from the decision-making function. MHU will provide appropriate evidentiary training for adjudicators (chosen by the university), and live hearings (which may be “virtual”) that are recorded. Highlighting the importance of cross-examination, presiding decision-maker(s) are forbidden from relying on any statement of any party or witness who refuses to submit to live cross-examination in reaching a determination regarding responsibility. The scope of cross-examination and questioning requires decision-maker(s) to determine whether a question is relevant before the party or witness is required to answer. The decision-maker(s) must then explain on the record the basis for excluding a question as not relevant. Some rape shield protections for complainants apply, as questions and evidence about a complainant’s sexual predisposition or prior sexual behavior are deemed not relevant by default. MHU will provide an advisor to conduct the cross-examination, free of charge to a party if she or he does not have one present at the live hearing.

**Final Determination**

A written determination will be provided simultaneously to all parties for each alleged policy violation.

**Appeal**

**Right of Appeal.** Both the Complainant and the Respondent have the right to appeal the result of the Investigation Report in writing within 5 business days. Appeals are limited to 1500 words and must be based on one or more of the following grounds:

* The appealing party has new information that was not reasonably available before the investigation and could have significantly affected the Investigators’ determination that the Respondent was or was not responsible (“new information”).
* The appealing party has evidence of a procedural error in the investigation that could have significantly affected the Investigators’ determination that the Respondent was or was not responsible (“procedural error”).
* The appealing party asserts that the severity of the recommended disciplinary actions and/or remedial steps is substantially disproportionate to the severity of the violation (“disproportionate recommendation”).

Disagreement with the Investigators’ determination or with the recommended disciplinary actions and/or remedial steps is not grounds for an appeal. Any appeal filed after 5 business days will be dismissed.

**Appointment of Review Board.** Should an Appeal be filed in a timely manner and based on appropriate grounds, the Title IX Coordinator will appoint a three-person Review Board to hear the Appeal within 5 business days. The Review Board will consist of a Review Board Chair, who must be an individual who has experience serving as an Investigator or Assistant Investigator and has civil rights investigator training, and two additional Review Board Members. Neither the Investigator nor the Assistant Investigator assigned to review the recommendations of the Investigation Report being appealed may serve on the Review Board. The Title IX Coordinator will communicate with the Complainant and the Respondent to ensure that no prospective members have a conflict of interest before finalizing the Review Board’s membership.

**Review Board Procedures.** The members of the Review Board will review the complaint, the Response (if provided), the Investigation Report, and the Appeal. The purpose of the Review Board is to determine whether the Appeal has merit, not to reinvestigate the complaint. If the Appeal is based on new information, the Review Board may review additional material evidence or interview witnesses to determine whether the new information could have significantly affected the Investigators’ determination. A Complainant or Respondent interviewed by the Review Board may be accompanied by an advisor of their choice. All participants in interviews are required to maintain strict confidentiality about the interviews, sharing neither the Review Board members’ questions nor their responses with others, unless they are given written consent to do so by the Title IX Coordinator. If the Appeal is based on an alleged procedural error, the Review Board may interview the Investigators or other individuals as necessary to determine whether the alleged procedural error could have significantly affected the Investigators’ determination.

**Review Board Report -** Within 10 business days of being appointed, the Review Board will produce its Review Board Report, which presents the opinion of a majority of the Review Board members as to whether the Appeal has merit. The Title IX Coordinator will share this report with the Complainant and the Respondent. If the Review Board finds that an appeal based on new information has merit, the Title IX Coordinator will instruct the Investigator and Assistant Investigator to review the new information, examining material evidence or conducting new interviews as appropriate, and produce a Revised Investigation Report. If the Review Board finds that an appeal based on a procedural error has merit, the Title IX Coordinator will appoint a new Investigator and Assistant Investigator to conduct a new investigation. If the Review Board finds that an appeal based on a disproportionate recommendation has merit, the Review Board will make a new recommendation.