



MISERICORDIA
UNIVERSITY

Origination: 09/2014

Effective: 06/2021

Last Approved: 06/2021

Policy Steward: *Pamela Parsnik: Director of
Human Resources & Title IX
Coord.*

Area: *Human Resource Mgmt*

Sexual Misconduct & Title IX Sexual Harassment Policy

I. Reason for Policy

Misericordia University prohibits any form of discrimination and harassment on the basis of sex, race, color, age, religion, national or ethnic origin, sexual orientation, gender identity or expression, pregnancy, marital or family status, medical condition, genetic information, veteran status, or disability in any decision regarding admissions, employment, or participation in a Misericordia University program or activity in accordance with the letter and spirit of federal, state, and local non-discrimination and equal opportunity laws, such as Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, The Age Discrimination in Employment Act, The Americans with Disabilities Act and ADA Amendments Act, The Equal Pay Act, Sections 503 and 504 of the Rehabilitation Act of 1973, Executive Order 11246, the Uniformed Services Employment and Reemployment Rights Act, as amended, the Genetic Information Nondiscrimination Act of 2008 and the Pennsylvania Human Relations Act. To view the University's full statement on non-discrimination, see Misericordia University's [Non-Discrimination Policy](#).

Misericordia University also complies with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crimes Statistics Act, as amended by the Violence Against Women Act (VAWA). Title IX prohibits retaliation for asserting or otherwise participating in claims of sex discrimination. VAWA imposes additional duties on universities and colleges to investigate and respond to reports of sexual assault, stalking, and dating or domestic violence, and to publish policies and procedures related to the way these reports are handled. Misericordia University has designated the Title IX Coordinator, with assistance of the Deputy Title IX Coordinator and the Director of Campus Safety and Security, to coordinate Misericordia University's compliance with Title IX and VAWA and to respond to reports of violations.

Misericordia University has directed the Director of Campus Safety and Security to coordinate the University's compliance with the Clery reporting related VAWA requirements. The University will promptly and equitably respond to all reports of sex discrimination, sexual misconduct, and sexual harassment in order to eliminate the misconduct, prevent its recurrence, and redress its effects on any individual or the community.

This policy governs all aspects of employment, evaluation, promotion, assignment, dismissal, and other terms and conditions of employment. Moreover, this policy governs all aspects of student admissions. As an educational institution with an Affirmative Action program, the University complies with government regulations, including Affirmative Action responsibilities where they apply.

II. Policy Statement

Title IX of the Education Amendments of 1972 prohibits discrimination based on sex in educational programs and activities that receive federal financial assistance. The University is committed to the principles of equal opportunity and seeks to establish and maintain an environment which ensures equal access to education for all Misericordia University community members including students, applicants for admission, employees, applicants for employment, guests, and visitors. Misericordia University does not discriminate on the basis of sex in any education program or activity operated by the University including, but not limited to, admissions, employment, recruitment, compensation, and athletics as well as access to housing and facilities, classes and schools, counseling, employment assistance to students, health and insurance benefits and services, and fringe benefits. Misericordia University is required by Title IX and the regulations thereunder not to discriminate in such a manner.

To ensure compliance with Title IX and other federal and state civil rights laws, the University has developed policies and procedures that prohibit sex discrimination, sexual misconduct, and sexual harassment in all of its forms. The University complies with Section 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA).

For additional information or inquiries about the application of Title IX and the regulations thereunder, contact Misericordia University's Title IX Coordinator and/or the Assistant Secretary of the United States Department of Education.

The contact information for Misericordia University's Title IX Coordinator, Title IX Deputy Coordinator, and the Director of Campus Safety & Security is as follows:

For incidents involving employees:

Pamela Parsnik
Director of Human Resources & Title IX Coordinator
Mercy Hall, Ground Floor
301 Lake Street Dallas, PA 18612
Phone: (570) 674-6310
Email: pparsnik@misericordia.edu

For incidents involving students:

Kathleen Foley
Vice President of Student Life & Title IX Deputy Coordinator
301 Lake Street Dallas, PA 18612
Phone:(570) 674-6803
Email: kfoley@misericordia.edu

For incidents involving employees or students:

Director of Campus Safety & Security
301 Lake Street Dallas, PA 18612
Phone:(570) 674-8018

Sex discrimination, sexual misconduct, and sexual harassment can be committed by any member of the Misericordia University community. The University Sexual Misconduct Complaint Resolution Process and Title

IX Formal Complaint & Grievance Process described in Section VI. of this policy apply to incidents involving students and employees.

This policy applies to behaviors that take place on the campus, at University sponsored events or programs wherever they occur, including study abroad and internship programs, and off campus when the administration determines in its discretion that the off-campus conduct affects a substantial University interest. A substantial University interest is defined to include:

- Criminal offenses as defined by federal or state law that apply to Title IX. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- Situations where it appears that the individual may present a danger or threat to the health or safety of him/herself or others;
- Any situation that significantly impinges upon the rights, property, or achievements of self or others or significantly breaches the peace and/or causes social disorder;
- Any situation that would have continuing adverse effects, including the creation of a hostile environment, on campus; and/or
- Any situation that is detrimental to the educational or employment interests of the University.

This policy also applies to behavior conducted online, including via email, blogs, web page entries, social media, and other similar online postings that are in the public sphere and are not private. These postings can subject a community member to allegations of conduct violations. The University does not regularly search for this information but may take action if and when such information is brought to the attention of University officials.

The Sexual Misconduct & Sexual Harassment Policy will be reviewed on an annual basis by appropriate administration of the University in order to capture evolving legal requirements and improve the delivery of services based on a review of previous experience.

III. Who Should Read This Policy

This Misericordia University Sexual Misconduct & Sexual Harassment Policy applies to all members of the Misericordia community, including faculty, staff, students, applicants for admissions and employment, volunteers, visitors, guests, patrons, independent contractors, Board members, consultants, vendors, and others engaged in business with the University. Each member of the community is responsible for conducting him or herself in accordance with this Policy and other University policies and procedures.

Visitors to and guests of Misericordia University are both protected by this Policy and subject to the restrictions herein. Visitors and guests may seek resolution for violations of this Policy committed against them by members of the Misericordia University community. Visitors and guests may also be permanently trespassed from the University.

This policy may be applied to conduct that takes place from the time a person accepts enrollment as a student or accepts employment and continues until the student withdraws or graduates or the employee ceases employment, including periods during semester breaks and between semesters. Further, this Policy applies to guests of community members whose hosts may be held accountable for the misconduct of their guests.

IV. The Policy

1. Policy Overview

Any person may experience sex discrimination, sexual misconduct, or sexual harassment, irrespective of the

identity of the complainant or respondent, and is encouraged to report such incidents to the University. Any person, regardless of whether or not the person reporting the alleged incident is the person alleged to be victimized by the incident, may report sex discrimination, sexual misconduct, or sexual harassment to the Title IX Coordinator. Reports may be made at any time, including during non-business hours, in person, by mail to the office address listed for the Title IX Coordinator, by telephone, by email, or by any other means that result in the Title IX Coordinator receiving a person's written or verbal report.

Individuals may complete and submit Misericordia University's online Incident Report Form which can be found at: https://cm.maxient.com/reportingform.php?MisericordiaUniv&layout_id=3

The contact information for Misericordia University's Title IX Coordinator, Title IX Deputy Coordinator, and Director of Campus Safety & Security is as follows:

For incidents involving employees:

Pamela Parsnik
Director of Human Resources & Title IX Coordinator
Mercy Hall, Ground Floor
301 Lake Street Dallas, PA 18612
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Kathleen Foley
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301 Lake Street Dallas, PA 18612
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Director of Campus Safety & Security
301 Lake Street Dallas, PA 18612
Phone:(570) 674-8018

There is no time limit for reporting allegations of sex discrimination, sexual misconduct, or sexual harassment. However, the University strongly encourages the prompt reporting of prohibited misconduct to allow the University to respond promptly and effectively. If the reported respondent is not a member of Misericordia University community or is no longer associated with the University at the time of the report or at the time a resolution process is initiated, the University may be unable to conduct an investigation or take disciplinary action.

When the Title IX Coordinator or the Title IX Deputy Coordinator receives a report (either written or oral) of sex discrimination, sexual misconduct, or sexual harassment, the Title IX Coordinator, the Title IX Deputy Coordinator, or a designee will contact the complainant to provide supportive measures.

Upon receipt of a report, complaint, or formal complaint, the Title IX Coordinator, Deputy Title IX Coordinator, and Director of Campus Safety & Security will review the details of the alleged incident and conduct a preliminary assessment to determine which of the University's grievance procedures will be applied to address the report. Regardless of the type of incident, Misericordia University applies prompt and equitable

grievance procedures to resolve complaints of sex discrimination, sexual misconduct, and sexual harassment. Misericordia University grievance procedures apply equally to all persons regardless of sex, gender, sexual orientation or gender identity.

Incidents of sex discrimination which do not involve sexual harassment as defined under Title IX or sexual misconduct will be addressed through complaint procedures outlined in the University Policies or Handbooks (Student, Staff or Faculty Handbook, as applicable).

Complaints regarding incidents of sexual misconduct will be addressed using the University Sexual Misconduct Complaint Resolution Process as outlined in Section VI.4. of this policy. Sexual misconduct is defined as Prohibited Conduct in Section IV.3. of this policy.

Formal complaints of incidents of sexual harassment as defined under Title IX involving Misericordia University students or employees will be addressed using the Title IX Formal Complaint & Grievance Process as outlined in Section VI.5. of this policy.

When possible, the Title IX Coordinator or Deputy Title IX Coordinator will notify the reporting party of Misericordia University's complaint process which corresponds to the alleged incident.

Please see Section VI.2. Reporting Sex Discrimination, Sexual Misconduct & Sexual Harassment to make a report of prohibited conduct.

2. Title IX Coordinator Role & Responsibilities

All educational institutions receiving federal financial assistance must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under Title IX of the Education Amendment of 1972, which prohibits sex discrimination in education programs and activities. These designated employees are generally referred to as Title IX Coordinators.

The University has designated the Director of Human Resources to serve as the University's Title IX Coordinator and the Vice President of Student Life to serve as the Title IX Deputy Coordinator. The Title IX Coordinator and Title IX Deputy Coordinator will be informed of all reports of sex discrimination, sexual misconduct, and sexual harassment, and will oversee the University's centralized review, investigation, and resolution of those reports to ensure the University's compliance with Title IX and the effective implementation of this policy. The Title IX Coordinator will consult with the Title IX Deputy Coordinator and the Director of Campus Safety & Security, and others that "need to know" in order to implement procedures under this policy.

The Title IX Coordinator and Title IX Deputy Coordinators' responsibilities include, but are not limited to:

- Advising an individual, including a complainant, third-party reporter, or respondent, about the University's policies and procedures related to sex discrimination, sexual misconduct, and sexual harassment as well as explaining courses of action available at the University and the courses of action available externally regarding any such incidents, including reporting to law enforcement;
- Receiving incident reports of sex discrimination, sexual misconduct, and sexual harassment;
- Informing complainants of the availability of supportive measures;
- Informing complainants of the process for filing a formal complaint of sexual harassment under Title IX;
- Offering supportive measures to complainants designed to restore or preserve equal access to Misericordia University's education program or activity;
- Overseeing the investigation and resolution of all reports, complaints, and formal complaints of sex discrimination, sexual misconduct, and sexual harassment under Title IX;
- Working with respondents to provide supportive measures, as appropriate;

- Coordinating the effective implementation of both supportive measures (to one or both parties) and remedies to a complainant as well as disciplinary sanctions which may be imposed upon a respondent after the formal complaint process;
- Providing assistance to any University employee regarding how to respond appropriately to a report of sexual harassment or sexual misconduct;
- Monitoring full compliance with all procedural requirements, recordkeeping and timeframes outlined in this policy;
- Overseeing training, prevention and education efforts and annual reviews of climate and culture;
- Receiving the required training in University policies and procedures as well as relevant state and federal laws; and
- Handling other tasks and responsibilities as determined by the Title IX Coordinator.

Inquiries or complaints concerning the application of Title IX may be referred to the University's Title IX Coordinator, Title IX Deputy Coordinator and/or the United States Department of Education:

For incidents involving employees:

Pamela Parsnik
 Director of Human Resources & Title IX Coordinator
 Mercy Hall, Ground Floor
 301 Lake Street Dallas, PA 18612
 Phone: (570) 674-6310
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For incidents involving employees or students:

Director of Campus Safety & Security
 301 Lake Street Dallas, PA 18612
 Phone:(570) 674-8018

United States Department of Education, Office for Civil Rights
 Region III Office
 150 S. Independence Mall West
 Suite 372, Public Ledger Building
 Philadelphia, PA 19106-9111
 Phone: (800) 368-1019
 Email: ocr@ed.gov

Complaints with the Office for Civil Rights must be filed within one hundred eighty (180) days of the last act that the Complainant believes was discriminatory. There is no time limit for making a report to Misericordia University.

Additional information about Title IX, the Clery Act, VAWA (also referred to as the Campus SaVE Act) and

Family Educational Rights and Privacy Act (FERPA), federal laws referenced in this policy, can be found at the following links:

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|-----------|--|
| Title IX | https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/statutes/title-ix http://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html |
| Clery Act | http://cleryact.info/home.html |
| FERPA | http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html |
| VAWA | http://www.cleryact.info/campus-save-act.html |

Links to State Agencies (employees only)

It is the University's intention that through these procedures any complaints will be resolved internally. However, a Complainant may also file a complaint with state agencies.

Employees may file formal complaints with the following agencies:

Pennsylvania Human Relations Commission
101 South Second Street, Suite 300
Harrisburg, PA 17101
(717) 787-4410

U. S. Equal Employment Opportunity Commission
801 Market Street, Suite 1300
Philadelphia, PA 19107-3127
1-800-669-4000

3. Prohibited Conduct

The University prohibits a broad spectrum of behavior, including sex discrimination, sexual misconduct, and sexual harassment under Title IX.

Sexual misconduct and sexual harassment may also encompass criminal conduct under Pennsylvania and/or federal law. Additionally, sexual misconduct and sexual harassment under this policy may result in civil and/or administrative legal consequences.

The following conduct is specifically prohibited under this policy;

a. Sex Discrimination

Discrimination against an individual based on that person's sex, gender, gender identity or sexual orientation.

b. Sexual Misconduct

Sexual misconduct shall mean any act, including, but not limited to, any verbal, nonverbal, written or electronic communication or physical activity, directed toward or with a student regardless of the age of the student that is designed to establish a romantic or sexual relationship with the student.^[1]

^[1] Pennsylvania statute 24 P.S. 2070.1b,

Such prohibited acts include, but are not limited to:

- Sexual or romantic invitations;

- Dating or soliciting dates;
- Engaging in sexualized or romantic dialogue;
- Making sexually suggest comments

The University also considers the following behavior to be sexual misconduct under its own policy:

i. Harassment, Bullying or Cyberbullying

Harassment, bullying or cyberbullying, are defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally that includes, but is not limited to: creating web pages with a negative focus; posting insults or lewd photos on social networking sites; and/or spreading rumors with malicious intent. When these acts occur in the context of intimate partner violence or when the behavior is perpetrated on the basis of sex or gender, the conduct will be resolved under the Sexual Misconduct & Sexual Harassment Policy. Harassment bullying or cyberbullying not of a sexual nature will be dealt with through the university's customary procedures.

Harassment based on gender, sexual orientation, gender identity, or gender expression, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex/gender or sex/gender-stereotyping, even if the acts do not involve conduct of a sexual nature. Same-sex harassment violates this policy.

A single, isolated incident of harassment alone may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to create a hostile environment, particularly if the harassment is physical. The determination of whether an environment is "hostile" must be based on all the circumstances. These circumstances could include, but are not limited to:

- The frequency of the speech or conduct;
- The nature and severity of the speech or conduct;
- Whether the conduct was physically threatening;
- Whether the speech or conduct was humiliating;
- The effect of the speech or conduct on the complainant's mental and/or emotional state;
- Whether the speech or conduct was directed at more than one person;
- Whether the speech or conduct arose in the context of other discriminatory conduct;
- Whether the speech or conduct unreasonably interfered with the complainant's educational opportunities or performance (including study abroad), university-controlled living environment, work opportunities or performance;
- Whether a statement is a mere utterance of an epithet which engenders offense in an employee or a student or offends by mere discourtesy or rudeness; and/or
- Whether the speech or conduct deserves the protections of academic freedom.

ii. Intent to Commit Sexual Contact

Committing, attempting, or inciting another to commit sexual contact with another member of the University community without that person's consent, including but not limited to, rape and other forms of sexual assault.

iii. Non-Consensual Sexual Contact

Having sexual contact with another individual:

- By force or threat of force;
- Without effective consent; or
- Where that individual is incapacitated.
- Sexual contact includes any intentional touching of the intimate parts of another, causing another to touch

one's intimate parts, or disrobing or exposure of another without permission. Intimate parts may include the breasts, genitals, buttocks, groin, mouth or any other part of the body that is touched in a sexual manner.

iv. Sexual Exploitation

Taking sexual advantage of another person or violating the sexual privacy of another when consent is not present. This includes, but is not limited to, the following actions (including when they are done via electronic means, methods or devices):

- A. Sexual voyeurism or permitting others to witness or observe the sexual or intimate activity of another person without that person's consent;
- B. Indecent exposure or inducing others to expose themselves when consent is not present;
- C. Recording or distributing information, images or recordings of any person engaged in sexual or intimate activity in a private space without that person's consent;
- D. Prostituting another individual;
- E. Knowingly exposing another individual to a sexually transmitted disease or virus without that individual's knowledge; and
- F. Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

v. Physical Harm and Intimidation

Threatening, or causing physical harm, written or verbal abuse or other conduct that threatens or endangers the health or safety of any person; or implied threats or acts that cause an unreasonable fear of harm in another. When these acts occur in the context of intimate partner violence or when the behavior is perpetrated on the basis of sex or gender, the conduct will be resolved under the Sexual Misconduct & Sexual Harassment Policy.

vi. Forcible Compulsion

Compulsion by use of physical, intellectual, moral, emotional or psychological force, either express or implied. The term includes, but is not limited to, compulsion resulting in another person's death, whether the death occurred before, during or after sexual intercourse.^[2]

^[2] 18 Pa. C.S.A §3101

vii. Sexual Harassment

The University also considers the behaviors defined as "sexual harassment" under this policy, which include quid pro quo harassment; severe, pervasive and objectively offensive behavior; sexual assault; rape; dating violence; domestic violence; and stalking to be forms of sexual misconduct if they occur outside of the University's own education program or activities or outside of the United States, including during study abroad programs.

In general, sexual misconduct can take many forms. Sexual misconduct may:

- Be blatant and intentional and involve an overt action, a threat or reprisal, or may be subtle and indirect, with a coercive aspect that is unstated.
- Be committed by anyone, regardless of gender, age, position, or authority. While there is often a power differential between two persons, perhaps due to differences in age, social, educational, or employment relationships, harassment can occur in any context.

- Be committed by a stranger, an acquaintance, or someone with whom the complainant has an intimate or sexual relationship.
- Be committed by or against an individual or may be a result of the actions of an organization or group.
- Occur by or against an individual of any sex, gender identity, gender expression, or sexual orientation.
- Occur in the classroom, in the workplace, in residential settings, over electronic media (including the internet, telephone, and text), or in any other setting.
- Be a direct proposition of a sexual nature.
- Be a one-time event or part of a pattern of behavior.
- Be committed in the presence of others or when the parties are alone.
- Affect the complainant and/or third parties who witness or observe harassment.

Sexual misconduct does NOT have to include intent to harm, be directed at a specific target, or involve repeated incidents

Sexual misconduct differs in type and severity and can range from subtle verbal harassment to unwelcome physical contact. There is a wide range of behaviors that fall within the general definition of sexual misconduct and many differing notions about what behaviors are and are not acceptable.

c. Sexual Harassment under Title IX

Sexual harassment is a form of sex discrimination. Title IX defines sexual harassment as conduct on the basis of sex that satisfies **one or more of the following three types of behavior**:

i. Quid pro quo harassment

A Misericordia University employee conditioning provision of an aid, benefit or service of the University on an individual's participation in unwelcome sexual conduct.

For example, 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 constitutes sexual harassment when 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 or opportunities in any educational or employment program.

Quid pro quo harassment does not need to be severe and pervasive, as required under Paragraph 2. below, because the abuse of authority in the form of even a single instance is inherently offensive and serious enough to jeopardize equal educational access.

ii. Denial of Equal Educational Access due to Severe, Pervasive, and Objectively Offensive Conduct (Davis Standard)

Unwelcome conduct determined by a reasonable person to be so **severe, pervasive and objectively offensive** that it effectively denies a person equal access to a Misericordia University education program or activity.

Signs of enduring *unequal* educational access due to severe, pervasive, and objectively offensive sexual harassment may include skipping class to avoid a harasser, a decline in a student's grade point average, or having difficulty concentrating in class. However, no concrete injury is required to conclude that serious harassment would deprive a reasonable person in the complainant's position of the ability to access Misericordia University education program or activity on an equal basis with persons who are not suffering such harassment.

iii. Sexual Assault, Dating Violence, Domestic Violence, and Stalking

Sexual Assault: Forcible or non-forcible sex offenses under the FBI's Uniform Crime Reporting program (U.C.R.). Various forms of sexual assault include:

Sex Offenses, Forcible: Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent.

Forcible Rape: (Except Statutory Rape) The carnal knowledge of a person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity.

Forcible Sodomy: Oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

Sexual Assault with an Object: To use 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 or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

Forcible Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

Sex Offenses, Nonforcible: (Except Prostitution Offenses) Unlawful, nonforcible sexual intercourse.

Incest: Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape: Nonforcible sexual intercourse with a person who is under the statutory age of consent. In Pennsylvania, the age of consent is 16.

Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors:

- A. The length of the relationship
- B. The type of relationship
- C. The frequency of interaction between the persons involved in the relationship

Domestic Violence: 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 receiving grant monies, 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. *34 U.S.C. 12291 (a)(8)*

Stalking: 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.

Stalking includes the concept of cyber-stalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used to pursue, harass, or to make unwelcome contact with another person in an unsolicited fashion.

Stalking **not of a sexual nature** will be dealt with through the university's customary procedures.

Examples of stalking include:

- Unwelcome and repeated visual or physical proximity to a person;
- Repeated oral or written threats;
- Extortion of money or valuables;
- Unwelcome/unsolicited written communication, including letters, cards, emails, instant messages, and messages on on-line bulletin boards;
- Unwelcome/unsolicited communications about a person, their family, friends, or co-workers; or
- Sending/posting unwelcome and/or unsolicited messages with another username;
- Implicitly threatening physical conduct or any combination of these behaviors directed toward an individual person.

Sexual assault, which includes rape, is referenced in Paragraph 3. of the definitions of sexual harassment. Note that any report of sexual assault, dating violence, domestic violence, or stalking is not subject to the Davis Standard elements referenced in Paragraph 2. of definitions of sexual harassment, which consider whether the incident was "severe, pervasive, and objectively offensive." A single act of sexual assault, dating violence, domestic violence, or stalking does not need to demonstrate severity, pervasiveness, objective offensiveness, or denial of equal access to education because denial of equal access is assumed. Therefore, complainants can feel confident reporting such incidents to the University and receive supportive measures without wondering whether sexual assault is 'bad enough' to report.

Misericordia University is required under Federal Title IX regulations to respond to incidents of sexual harassment as stated above. Additionally, conduct outlined in the above definitions of sexual harassment and sexual misconduct may be considered a violation of Pennsylvania law and subject to mandatory reporting and/or criminal investigation.

4. Additional Information

a. Jurisdiction of this policy versus Title IX

Any person may experience sex discrimination, sexual misconduct, or sexual harassment anywhere. Therefore, any individual may report any incident to the Title IX Coordinator. However, the University's response to such incidents is dependent upon the location of the alleged incident.

The Title IX Formal Complaint & Grievance Process described in Section VI.5. of this policy must be applied when alleged incidents of sexual harassment as defined in this policy occur in Misericordia University's own education program or activity as defined below and in the United States.

Alleged incidents of sexual misconduct, including incidents of sexual harassment which occur outside of the University's own education program or activity or outside of the United States (for example, on a study abroad program), will be addressed using the University Sexual Misconduct Complaint Resolution Process, as described in Section VI.4. of this policy.

Alleged incidents of sex discrimination will be addressed using the complaint process outlined in applicable policies.

Misericordia University's jurisdiction extends to electronic, digital, and online sexual harassment. Factual circumstances of electronic, digital, and online sexual misconduct and sexual harassment will be analyzed on a case by case basis to determine the context in which the prohibited conduct occurred. Such sexual harassment which occurs in an education program or activity as defined below (in which the University exercises substantial control over the respondent and the context in which the harassment occurs) will be addressed using the Title IX grievance process outlined in this policy.

Incidents of electronic, digital, and online sexual harassment or misconduct which occur outside of the University's own education program or activity are subject to the University Sexual Misconduct Complaint Resolution Process, as described in Section VI.4. of this policy.

For clarification regarding incidents which occur on-campus versus off-campus, see the Definition of Education Program or Activity in Section V. of this policy.

b. Consent

i. Understanding Consent, Force, Coercion, Incapacitation and Alcohol

Consent: A knowing and voluntary agreement to engage in specific sexual activity at the time of the activity. In order to be valid, consent must be knowing, voluntary, active, present and ongoing. Consent is not present when an individual is incapacitated due to alcohol, drugs, or sleep, or otherwise without capacity to provide consent due to intellectual or other disability or other condition.

When alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. When drug use is involved, incapacitation is a state beyond being under the influence of or impaired by the use of the drug. Alcohol and other drugs impact each individual differently. Determining whether an individual is incapacitated requires an individualized determination.

When determining whether a person has the capacity to provide consent, the University will consider whether a sober, reasonable person in the same position knew or should have known that the other party could or could not consent to the sexual activity. When determining whether consent has been provided, all the circumstances of the relationship between the parties will be considered.

Force: Force is the use or threat of physical violence or intimidation to overcome an individual's freedom of will to choose whether or not to participate in sexual activity. There is no requirement that a party resists the sexual advance or request, but resistance will be viewed as a clear demonstration of non-consent. Under Pennsylvania law, force may also be moral, intellectual, emotional or psychological.

Coercion: Coercion is the use of unreasonable and persistent pressure to compel another individual to initiate or continue sexual activity against an individual's will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats and blackmail. Coercion may be emotional, intellectual, psychological or moral. A person's words or conduct are sufficient to constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include threatening to disclose another individuals' private sexual information related to sexual orientation, gender identity, or gender expression and threatening to harm oneself if the other party does not engage in the sexual activity. Coercing an individual into engaging in sexual activity violates this policy in the same way as physically forcing someone into engaging in sexual activity.

Incapacitation: An individual who is incapacitated lacks the ability to make informed, rational judgments and cannot consent to sexual activity. Incapacitation is defined as the inability, temporarily or permanently, to give

consent because an individual is mentally and/or physically helpless, asleep, unconscious, or unaware that sexual activity is occurring.

Where alcohol or other drugs are involved, incapacitation is a state beyond drunkenness or intoxication. The impact of alcohol and other drugs varies from person to person; however, warning signs that a person may be approaching incapacitation may include slurred speech, vomiting, unsteady gait, odor of alcohol, combativeness, or emotional volatility.

Evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects an individual's:

- Decision-making ability;
- Awareness of consequences;
- Ability to make informed judgments;
- Capacity to appreciate the nature and the quality of the act; or
- Level of consciousness.
- In other words, a person may be considered unable to give valid consent due to incapacitation if the person cannot appreciate the who, what, where, when, why, or how of a sexual interaction.

In other words, a person may be considered unable to give valid consent due to incapacitation if the person cannot appreciate the who, what, where, when, why, or how of a sexual interaction.

Evaluating incapacitation also requires an assessment of whether a respondent should have been aware of the complainant's incapacitation based on objectively and reasonably apparent indications of impairment when viewed from the perspective of a sober, reasonable person in the respondent's position.

An individual who engages in sexual activity with someone the individual knows or reasonably should know is incapable of making a rational, reasonable decision about whether to engage in sexual activity is in violation of this policy.

Alcohol & Other Drugs: In general, the University considers sexual contact while under the influence of alcohol or other drugs to be risky behavior. Alcohol and drugs impair a person's decision-making capacity, awareness of consequences, and ability to make informed judgments. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication. If there is any doubt as to the level or extent of the other individual's intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity.

The perspective of a reasonable person will be the basis for determining whether a respondent should have been aware of the extent and amount of the ingestion of alcohol or drugs by the complainant or of the extent to which the use of alcohol or drugs impacted a complainant's ability to give consent. For example, an individual who is in a blackout may appear to act normally and be giving consent, but may not actually have conscious awareness, the ability to consent or later recall of the events in question. In determining whether consent has been given, the University will consider both: the extent to which a complainant affirmatively gives words or actions indicating a willingness to engage in sexual activity; and, whether the respondent was aware – or reasonably should have known – of the complainant's level of alcohol consumption and/or level of impairment.

Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual harassment, sexual violence, stalking, or intimate partner violence and does not diminish one's responsibility to obtain informed and freely given consent.

ii. Additional Guidance about Consent:

Consent can only be given by one of legal age.

Consent is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage freely in sexual activity. While consent can be given by words or actions, non-verbal consent is more ambiguous than explicitly stating one's wants and limitations. Silence cannot be assumed to indicate consent.

Further, the expression of approval or agreement does not constitute consent if:

- A. It is given by a person who is legally incapacitated to authorize the conduct charged to constitute the offense;
- B. It is given by a person who by reason of youth, mental disease or defect intoxication is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or
- C. It is induced by force, duress or deception.

In accordance with Catholic teaching, the University does not condone engaging in sexual activity outside the confines of marriage. However, the University understands that individuals will make their own moral and ethical decision with regard to sexual activity, and the University encourages reporting of any prohibited conduct under this policy, including sexual assault or other non-consensual sexual activity. Individuals who choose to engage in sexual activity of any type with each other must first obtain clear consent.

When obtaining consent, consider the following:

- Each participant in a sexual encounter is expected to obtain and give consent to each act of sexual activity. Consent to one form of sexual activity does not constitute consent to engage in all forms of sexual activity.
- Consent consists of an outward demonstration indicating that an individual has freely chosen to engage in sexual activity. Relying on non-verbal communication can lead to misunderstandings. Consent may not be inferred from silence, passivity, lack of resistance, or lack of an active response alone. A person who does not physically resist or verbally refuse sexual activity is not necessarily giving consent.
- When consent is requested verbally, absence of any explicit verbal response constitutes lack of consent. A verbal "no" constitutes lack of consent, even if it sounds insincere or indecisive. Under this policy, "no" always means "no" and "yes" may not always mean "yes."
- If at any time during the sexual activity, any confusion or ambiguity arises as to the willingness of the other individual to proceed, both parties should stop and clarify, verbally, the other's willingness to continue before continuing such activity.
- Either party may withdraw consent at any time. Withdrawal of consent should be outwardly demonstrated by words or actions that clearly indicate a desire to end sexual activity. Once withdrawal of consent has been expressed, sexual activity must cease.
- Individuals with a previous or current intimate relationship do not automatically give either initial or continued consent to sexual activity. Even in the context of a relationship, there must be mutually understandable communication that clearly indicates a willingness to engage in sexual activity.
- Consent is not effective if it results from the use or threat of physical force, intimidation, or coercion, or any other factor that would eliminate an individual's ability to exercise his or her own free will to choose whether or not to have sexual contact.
- Individuals who consent to sexual activity must be able to fully understand what they are doing. An individual who is physically or mentally incapacitated from alcohol or other drug consumption (voluntarily

or involuntarily) or is asleep, unconscious, unaware, or otherwise physically helpless is considered unable to give consent. See Incapacitation for further discussion.

- Under Pennsylvania law, consent can never be given by minors under the age of 13. Statutory provisions also prohibit sexual activity with minors under the age of 16 where there is 4 or more years difference in age between the parties.

c. Privacy, Confidentiality, Privilege & Reporting Requirements

The University is committed to protecting the privacy of all individuals involved in a report of sex discrimination, sexual misconduct, and/or sexual harassment. In any report under this policy, every effort will be made to protect the privacy interests of all individuals involved in a manner consistent with the need for a careful assessment of the allegation and any necessary steps to eliminate the harassment, prevent its recurrence, and address its effects. Privacy, confidentiality, and privilege have distinct meanings under this policy.

i. Privacy

Privacy generally means that information related to a report of sex discrimination, sexual misconduct, or sexual harassment will only be shared with a limited circle of individuals, including individuals who "need to know" in order to assist in the review, investigation, or resolution of the report or to deliver resources or support services. While not bound by confidentiality or privilege, these individuals will be discreet and respect the privacy of all individuals involved in the process. All participants in an investigation of sexual misconduct or sexual harassment, including advisors and witnesses, will be informed that privacy helps enhance the integrity of the investigation and protect the privacy interests of the parties and will be asked to keep any information learned in an investigation meeting or hearing confidential, to the extent consistent with applicable law.

In accordance with Title IX, the University will keep private the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute or regulations, 20 U.S.C. 1232g and 34 CFR part 99, or required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

ii. Confidentiality

Certain individuals are designated as having confidentiality. For reports made to employees designated with having confidentiality, the University will respect the reporting party's expectations of privacy **to the extent permissible by law** while still ensuring compliance with other reporting obligations. For example, complaints involving minors are subject to mandatory reporting requirements.

Individuals designated as having confidentiality are required to report the nature, date, time and general location of an incident to the Title IX coordinator. Confidential resources will not share other information with the Title IX Coordinator or any other employee of the University without the express permission of the disclosing party. Confidential resources can provide information about the University and off-campus resources, support services and other options. As noted above, because of the confidential nature of these resources, disclosing information to or seeking advice from a confidential resource does not constitute a report or complaint to the University and will not result in a response or intervention by the University. A person consulting with a confidential resource may later decide to make a report to the University and/or law

enforcement.

Community members wishing to seek completely confidential assistance may speak with counselors in the Counseling and Psychological Services Center (CAPS Center), health service providers in the Student Health and Wellness Center, off-campus rape crisis resources, or members of the clergy/chaplains (in the context of confidential communications) who will maintain confidentiality.

iii. Privilege

Communication with certain individuals may be privileged by operation of law and reports made to these individuals will not be shared with the University Title IX Coordinator or law enforcement except in very limited situations, such as when failure to disclose the information would result in imminent danger to the individual or to others or as otherwise required by law.

iv. Reporting Requirements

Misericordia University will generally respect a complainant's choice whether to report an incident to local law enforcement or initiate the University's grievance process or complaint resolution process, unless the University determines that there is an overriding interest with respect to the safety or welfare of the University community.

Childline: Where a report involves suspected abuse of a child (an individual under the age of 18 at the time of the incident(s) as reported), all Misericordia University employees and volunteers are required to notify the police and the ChildLine run by the Pennsylvania Department of Human Services. All other members of the University community are strongly encouraged to report suspected child abuse to law enforcement or the ChildLine.

Release of Information: If a report of misconduct discloses a serious and ongoing threat to the campus community, the University will issue a timely notification to the community to protect the health or safety of the community. The University may also share non-identifying information about reports received in aggregate form, including data about outcomes and sanctions. At no time will the University release the name of the complainant to the general public without the express consent of the complainant or as otherwise permitted or required by law.

Pursuant to the Clery Act, anonymous statistical information must be shared with Campus Safety where required by the Clery Act. Annual Clery reporting to the U.S. Department of Education is required by educational institutions for certain offenses that have been reported at campus locations. The information contained in the Clery report tracks the number of Clery reportable offenses occurring at campus locations and does not include the names or any other identifying information about the persons involved in the incident.

Misericordia University reserves the right to notify the parents/guardians of dependent students regarding any conduct situation, particularly university probation, loss of housing, suspension, and expulsion

All Misericordia University proceedings are conducted in compliance with the requirements of the Family Educational Rights and Privacy Act (FERPA), the Clery Act, Title IX of the Education Amendments of 1972 ("Title IX"), Violence Against Women Act (VAWA), state and local law, and Misericordia University policy. No information will be released from such proceedings, except as required or permitted by law and University policy. Links to these federal laws are provided in Section IV.2. of this policy.

The University may share non-identifying information about reports received in aggregate form, including data about outcomes and sanctions.

d. Supportive Measures

i. Understanding Support Measures

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant and respondent without unreasonably burdening the other party.

Supportive measures are designed to:

- Restore or preserve equal access to the party's education at Misericordia University;
- Protect the safety of all parties or the University educational environment; or
- Deter sexual harassment.

The University, at its discretion, will implement supportive measures. Potential remedies, which may be applied to the complainant and/or the respondent to the extent reasonably available and warranted by the circumstances, include, but are not limited to:

- Access to counseling services and assistance in setting up initial appointment, both on and off campus;
- Imposition of an on-campus "no-contact order;"
- Rescheduling of exams and assignments;
- Providing alternative course completion options;
- Change in class schedule, including the ability to transfer course sections or withdrawal from a course without penalty;
- Change in work schedule or job assignment;
- Change in student's University-sponsored or controlled housing;
- Assistance from University support staff in completing housing relocation;
- Limit of an individual's or organization's access to certain University facilities or activities pending resolution of the matter;
- Providing an escort to ensure safe movement between classes and activities;
- Providing non-emergency medical services during business hours;
- Providing academic support services, such as tutoring;
- Any other remedy, which can be tailored to the involved individuals to achieve the goals of this policy.

Misericordia University will offer supportive measures to every complainant when the Title IX Coordinator receives a report, complaint, or formal complaint of an incident of sex discrimination, sexual misconduct, or sexual harassment. Examples of a report may include written or oral reports submitted by a complainant, Responsible Employee, anonymous reporting party, third-party reporter, or other University community member.

Upon receiving a report of an alleged incident of sexual harassment or sexual misconduct, the Title IX Coordinator or the Title IX Deputy Coordinator will promptly contact the complainant to discuss the availability of supportive measures and explain the option for filing a Title IX Formal Complaint of sexual harassment as well as the grievance process under Title IX and/or the option for filing a University Sexual Misconduct Complaint and the University's complaint resolution process. The complainant will have the opportunity to express what they would like in the form of supportive measures, and the Title IX Coordinator or Title IX Deputy Coordinator will take into account the complainant's wishes in determining which supportive measures to offer. Supportive measures will be available to complainants regardless of whether or not they wish to file a formal complaint to initiate a grievance process and/or file a complaint to initiate the complaint resolution process.

Supportive measures remain available to the complainant before and after filing a formal complaint of sexual harassment or a complaint of sexual misconduct as well as when no formal complaint or complaint has been filed. Additionally, Misericordia University will provide supportive measures to complainants even when the alleged incident does not constitute sexual harassment under Title IX, fall within the jurisdictional conditions under Title IX, or constitute sexual misconduct under this policy. For example, a complainant may still seek supportive measures when an incident of sexual harassment occurs outside of the University's education program or activity or outside of the United States. A complainant may request supportive measures when the alleged conduct is considered to be sexual misconduct under this policy but does not qualify as sexual harassment under Title IX.

Supportive measures may remain in place throughout an appeal process.

Regardless of the result of the Title IX grievance process or University sexual misconduct complaint resolution process, Misericordia University reserves the right to continue supportive measures. Therefore, if the University determines that a respondent is not responsible for violating this policy or Title IX, the University may continue providing supportive measures to a complainant or respondent to restore or preserve equal access to their education.

Misericordia University adheres to Federal Title IX regulations, which require the equitable treatment of complainants and respondents. Equitable treatment under Title IX includes providing supportive measures and remedies for complainants and avoiding disciplinary action against respondents until the formal grievance process as outlined in this policy is completed. While respondents will be offered supportive measures, Title IX does not require equality or parity with respect to the supportive measures provided to complainants and respondents.

ii. Identity of complainant/respondent - Supportive Measures

The University will keep confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the supportive measures. For example, where a no-contact order is appropriate, the respondent would need to know the identity of the complainant in order to comply with the no-contact order, or campus security is informed about the no-contact order in order to help enforce its terms.

In order for Misericordia University to provide supportive measures to the complainant, the University must know the identity of the complainant. Therefore, it is not possible for the complainant to remain anonymous and receive supportive measures because at least one school official (such as the Title IX Coordinator) must know the complainant's identity in order to offer and implement any supportive measures. A complainant or third party may desire to report sexual harassment without disclosing the complainant's identity—and may do so using the reporting options detailed in this policy—but the University will be unable to provide supportive measures in response to the report without knowing the complainant's identity.

iii. Implementation of Supportive Measures

The Title IX Coordinator and/or the Deputy Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. Although supportive measures may require collaboration with various Departments on campus, the Title IX Coordinator and/or the Deputy Title IX Coordinator will serve as the point of contact for complainants and respondents.

iv. Emergency Removal

Misericordia University reserves the right to remove a respondent from a the University education program or activity without undergoing a grievance process on an emergency basis. The University will convene the

Behaviorial Intervention Team (BIT) to undertake an individualized safety and risk analysis to determine if there is an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment that would justify removal.

In the event of emergency removal, Misericordia University will provide the respondent with post-removal notice.

v. Administrative Leave

Misericordia University reserves the right to place a non-student employee respondent on administrative leave while the grievance process is pending as outlined in this policy.

e. Resources

The University encourages all individuals to contact appropriate authorities including but not limited to campus safety and/or law enforcement and seek medical treatment as soon as possible following an incident which poses a threat to safety or physical well-being.

The University is committed to treating all members of the community with dignity, care, and respect. Any individual affected by sex discrimination, sexual misconduct, or sexual harassment, whether as a complainant, a respondent, or a third party, will have equal access to support consistent with their needs and available University resources.

The University recognizes that deciding whether to make a report and choosing how to proceed can be difficult decisions. The University encourages any individual who has questions or concerns to seek the support of campus and community resources. These professionals can provide information about available resources and procedural options and assistance to either party in the event that a report and/or resolution under this policy are pursued. Individuals are encouraged to use all available resources, regardless of when or where the incident occurred.

i. Emergency Support Services

All individuals to seek assistance from a medical provider and/or law enforcement as soon as possible following an incident, which poses a threat to safety or physical well-being. This is the best option to provide physical safety, emotional support, and medical care to the complainant. It is also the best option to ensure preservation of physical or forensic evidence, which may only exist for a finite period of time, and to begin a timely investigative and remedial response. The University will escort any Misericordia community member to a safe place, provide transportation to the hospital, assist in coordination with law enforcement, and provide information about the University's resources and complaint processes.

Assistance is available from the University and local law enforcement 24 hours a day, year-round, by calling the Office of Campus Safety and/or the respective Police Department for the campus location.. Any individual can request that a member of the Office of Campus Safety and/or Police Department respond and take a report.

Misericordia University Office of Campus Safety

Misericordia University | Mercy Hall | (570) 674-6300

Dallas Township Police Department (Dallas Campus)

(570) 674-2003 or 911

Dallas Borough Police Department (Dallas Campus)

(570) 675-0161 or 911

Moon Township Police Department (Pittsburgh Campus)

[\(412\) 262-5000](tel:(412)262-5000)

Local medical providers can provide emergency and/or provide follow-up medical services and conduct forensic sexual assault examinations. An individual can also contact a Student Health and Wellness Center nurse or nurse practitioner (during the academic year, during open hours) who can provide follow-up medical services, and provide a forum to discuss any health care concerns related to the incident in a confidential medical setting. The Student Health and Wellness Center, however, is not equipped to conduct forensic sexual assault examinations.

The medical exam obtained from a hospital or sexual assault response center has two goals: first, to diagnose and treat the full extent of any injury or physical effect (sexually transmitted infection or possibility of pregnancy) and, second, to properly collect and preserve evidence. The exam may include testing and prophylactic treatment for HIV/AIDS, STIs, and pregnancy, a vaginal/anal examination, collecting fingernail scrapings and/or clippings, examining for injuries, and a blood draw. There is a limited window of time (typically 72 to 96 hours) following an incident of sexual assault to preserve physical and other forms of evidence. Taking the step to gather evidence immediately does not commit an individual to any course of action. The decision to seek medical attention and gather any evidence will preserve the full range of options to seek resolution through the University's complaint processes or criminal action.

Misericordia University Student Health and Wellness Center (Dallas Campus)

(570) 674-6276

M-F, 8:30 am until 4:30 pm

Wilkes-Barre General Hospital (Dallas Campus)

(570) 829-8111

Provides medical treatment and Sexual Assault Forensic Exams

Geisinger Wyoming Valley Hospital (Dallas Campus)

(570) 808-7300

Provides medical treatment and Sexual Assault Forensic Exams

Heritage Valley Health System (Pittsburgh Campus)

(412) 269-9590

Allegheny Health Network (Pittsburgh Campus)

(412) 741-5670

ii. Confidential Resources and Support

For individuals who are seeking confidential consultation, there are several resources available to provide confidential support, both on campus and in the local community. The trained professionals designated below can provide counseling, information, and support under legally protected confidentiality. Because these relationships involve privileged conversations, these confidential resources will not share information about a patient/client (including whether or not that individual has received services) with the Title IX Coordinator or any other employee of the University without the individual's express written permission. They may, however, submit non-identifying information about the incident for purposes of making a statistical report under the Clery Act.

a. On Campus Confidential Resources (Dallas and Pittsburgh):

Misericordia University Counseling and Psychological Services Center (CAPS)

McGowan Hall, Lower Level, or call (570) 674-6408

M-F, 8:30 am until 4:30 pm during the academic year; 24/7 on call counselor can be reached by calling Campus Safety at (570) 674-6300

The center offers individual counseling, group counseling, outreach activities, crisis intervention for students and also provides consultation services to family members, friends, faculty and staff.

Misericordia University Student Health and Wellness Center (Dallas Campus)

Anderson Sports and Health Center, or call (570) 674-6276

b. Off Campus Confidential Resources:

Employee Assistance Program

(800) 538-3543

www.CignaBehavioral.com/CGI

Victims Resource Center (Dallas Campus)

Hotline: (570) 823-0765

Provides advocacy, support services, crisis counseling, and on-going therapeutic support.

Luzerne County Domestic Violence Services Center (Dallas Campus)

Hotline: (800) 424-5600

Provides emergency shelter, transitional housing, a 24-hour hotline, safety planning, supportive options counseling, assistance in filing for Protection from Abuse Orders, advocacy and numerous other services that are free and kept strictly confidential

Crisis Center North (Pittsburgh Campus)

Hotline: (412) 364-5556

Provides advocacy, support services, crisis counseling, and on-going therapeutic support.

National Domestic Violence Hotline (NDV)

(800) 799-7233 (SAFE)

The National Domestic Violence Hotline can provide advocacy, resources, referral, and legal assistance to victims of relationship violence. The Hotline is under no obligation to notify the University when providing services to students.

www.thehotline.org

Rape, Abuse and Incest National Network (RAINN)

(800) 656-4673

A confidential, anonymous national sexual assault hotline.

www.rainn.org

iii. Campus Resources

In addition to the confidential resources listed above, Misericordia community members have access to a variety of resources provided by the University. The professionals listed below are trained to support individuals affected by sexual harassment, sexual violence, stalking or intimate partner violence and to coordinate with the Title IX Coordinator consistent with the University's commitment to a safe and healthy educational environment. While not bound by confidentiality, these resources will maintain the privacy of an individual's information within the limited circle of those involved in the Title IX resolution process.

Misericordia University Title IX Coordinator

Pamela Parsnik
Director of Human Resources, & Title IX Coordinator
Mercy Hall, Dallas Ground Floor
Phone: (570) 674-6310
Email: pparsnik@misericordia.edu

Misericordia University Office of Campus Safety

Mercy Hall, Dallas (570) 674-6300
Available 24 hours a day/7 days a week/365 days a year

Campus Safety may assist with the on-campus investigation of the incident and assist in obtaining a protection from abuse order, protection from sexual violence order, or protection from intimidation. Campus Safety can assist with contacting the appropriate law enforcement agency if the complainant requests a criminal investigation be initiated. If the complainant does not wish for law enforcement to investigate, Campus Safety officers may notify the appropriate law enforcement agency of the incident and the fact the complainant request to remain anonymous.

Misericordia University Office of Student Life

Banks Student Center, Dallas
Kathleen Foley
Vice President Student Life & Title IX Deputy Coordinator
Phone: (570) 674-6803
Email: kfoley@misericordia.edu

Callie Rimpfel, Assistant Dean of Students
Phone: (570) 674-8318
Email: crimpfel@misericordia.edu

Both the Vice President Student Life and the Assistant Dean of Students can also connect students to on- and off-campus resources.

Office of Human Resources

Mercy Hall (570) 674-6310

Human Resources staff can assist faculty and staff requesting information, resources and reporting options. Additionally, Human Resources can assist faculty and staff with requesting workplace accommodations during the mediation or investigation process. Information shared with Human Resources will be shared with Campus Safety and relevant administrators.

f. Alcohol and Drug Use Amnesty

The health and safety of every student at Misericordia University is of utmost importance. The University recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time sex discrimination, sexual misconduct, or sexual harassment occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The University strongly encourages students to report incidents of sex discrimination, sexual misconduct, and sexual harassment. Generally, a witness to or individual who experiences sex discrimination, sexual misconduct, and/or sexual harassment, acting in good faith, who discloses any incident of prohibited conduct described in this policy to University officials or law enforcement will not be sanctioned under Misericordia University's Code of Conduct for violations of alcohol and/or drug use policies occurring at or near the time of the incident(s) of sex

discrimination, sexual misconduct, or sexual harassment, provided that any such violations did not and do not place the health and safety of any person at risk. The University may request the individual pursue educational or therapeutic remedies, however, such as attending an approved alcohol or drug education program and without assessing any charges for such program. This amnesty provision also applies to student groups making a report of sex discrimination, sexual misconduct, or sexual harassment. Amnesty does not preclude or prevent action by police or other legal authorities pursuant to relevant state or federal criminal statutes.

g. Disciplinary Sanctions & Remedies

Respondents and complainants may be subject to the following disciplinary sanctions and remedies, respectively:

Disciplinary Sanctions: Respondents found responsible for sexual misconduct and/or sexual harassment as defined in this policy may be subject to disciplinary sanctions at the conclusion of the complaint resolution or grievance process. Disciplinary sanctions range from warning to expulsion (student) or termination (employee) from the University, depending on the severity of the incident and taking into account any previous disciplinary violations. For more information about disciplinary sanctions, see the University's Student or Employee Handbooks/Policies.

The range of possible sanctions includes, but is not limited to:

- Official Warning
- Educational Sanctions
- Loss of Campus Privileges
- Disciplinary Probation
- University Probation
- Mandated Counseling
- Residential Sanctions
- Suspension
- Expulsion (students) or termination (employees)

Remedies: Remedies are provided to the complainant and designed to restore or preserve their equal access to the University's education program or activity. Remedies may be the same individualized services as Supportive Measures, as defined in Section IV.4. of this policy. However, remedies can be disciplinary or punitive and may adversely impact the respondent.

Remedies may include, but are not limited to:

- Access to counseling services and assistance in setting up initial appointment, both on and off campus;
- Imposition of a "no-contact order;"
- Rescheduling of exams and assignments;
- Providing alternative course completion options;
- Change in class schedule, including the ability to transfer course sections or withdrawal from a course without penalty;
- Change in work schedule or job assignment;
- Change in student's University-sponsored or controlled housing;
- Assistance from University support staff in completing housing relocation;
- Limit of an individual's or organization's access to certain University facilities or activities pending resolution of the matter;

- Providing an escort to ensure safe movement between classes and activities;
- Providing non-emergency medical services during business hours;
- Providing academic support services, such as tutoring;
- Any other remedy, which can be tailored to the involved individuals to achieve the goals. of this policy.

The Title IX Coordinator or Deputy Title IX Coordinator is responsible for implementation of remedies.

h. False Accusations

Misericordia University's Code of Conduct prohibits parties, including complainants, respondents, and witnesses, from knowingly making false statements or knowingly submitting false information during the grievance process.

The University takes the validity of information very seriously, as a charge of sex discrimination, sexual misconduct, or sexual harassment may have severe consequences.

The University may subject an individual to disciplinary action for making a materially false statement in bad faith during the course of the grievance or complaint resolution process. Such actions do not constitute retaliation on behalf of Misericordia University against the individual. Similarly, a respondent or witness who is later proven to have intentionally given false information during the course of an investigation may be subject to disciplinary action.

i. Retaliation

Retaliation is defined as any action, directly or through others, which is aimed to deter a reasonable person from reporting sexual misconduct or participating in an investigation or hearing or action that is done in response to such activities. A finding of retaliation under this policy is not dependent on a finding that the underlying sexual misconduct occurred.

Misericordia University prohibits any form of retaliation, including intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because an individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX, or this policy. University policy violations that do not involve sex discrimination, sexual misconduct, or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination or sexual misconduct or report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX will be addressed under this policy.

This retaliation provision may apply to any individual who has made a report or complaint of sex discrimination or sexual misconduct as well as any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been alleged to be responsible for sex discrimination, any respondent, any witness, or any other individuals who participate (or refuse to participate) in any manner in an investigation, proceeding, or hearing of Misericordia University's Title IX grievance process or complaint resolution process. This policy includes protecting the complainant, respondent, and witnesses from being coerced, intimidated, threatened, or otherwise discriminated against based on their participation or refusal to participate in the Title IX grievance process.

Charging an individual with a University policy violation for making a materially false statement in bad faith in the course of the grievance or complaint resolution process does not constitute retaliation. However, a determination regarding responsibility alone is not sufficient to conclude that an individual made a materially false statement in bad faith. A complainant's allegations may not have been false even where the ultimate

determination is that the respondent is not responsible and/or that the complainant may not have acted subjectively in bad faith (and conversely, that a respondent may not have made false, or subjectively bad faith, denials even where the respondent is found responsible).

Exercising rights protected under the First Amendment does not constitute retaliation.

The parties have the right to discuss the allegations under investigation, but this right does not preclude the University from warning the parties not to discuss or disseminate the allegations in a manner that constitutes retaliation. It is unacceptable for any person to leak or disseminate information to retaliate against another person.

Complaints related to non-sexual harassment sex discrimination alleging retaliation that are reported to the University's Title IX Coordinator or Title IX Deputy Coordinator will be handled using the prompt and equitable grievance procedures available for complaints by students and employees, as outlined in the University Handbooks (Student, Staff or Faculty, as applicable).

j. Prohibited Relationships by Persons in Authority

Amorous, sexual or other intimate relationships in which one party maintains a direct supervisory or evaluative role over the other party are viewed as professionally unethical, violate Misericordia University rules of conduct and therefore may be subject to discipline. In general, this includes all amorous, sexual or other intimate relationships between faculty and students, staff and students, and supervisors and subordinate faculty and staff. Misericordia University's policy and its commitment to a climate free from sexual and other forms of unlawful harassment and discrimination is that it is both unwise and inappropriate to permit relationships where there is an asymmetry of power caused by a direct supervisory relationship between the parties. It is incumbent on those with authority not to abuse or appear to abuse the power with which they have been entrusted.

Relations between persons occupying such asymmetrical positions of power, even when both consent, raise suspicions that the person in authority has violated standards of professional conduct and potentially subject the person in authority to charges of sexual harassment based on changes in the perspective of the individuals involved as to the consensual nature of the relationship. Similarly, these relationships may impact third parties based on perceived or actual bias, favoritism or special treatment based on the relationship. In any allegation of sexual misconduct or sexual harassment brought by a person in a subordinate position, "consent to the relationship" will not be deemed a sufficient defense or justification for conduct which otherwise would be deemed sexual harassment under the policy of the University.

Prudence and the best interests of the participants in the relationship and others working with them dictate that if a romantic relationship develops between persons occupying asymmetrical positions of power, the supervisory relationship cannot be permitted to continue. In the event of such a relationship, it is the responsibility of the person in a position of authority to notify his/her own supervisor so that a resolution consistent with this policy may be reached. Failure to comply with this requirement is a violation of this policy, and the person in authority could be subject to disciplinary action, up to and including dismissal from employment by the University.

Any individual may report or file a complaint alleging harassment or discrimination, including an aggrieved party outside the relationship affected by the perceived harassment or discrimination. Retaliation against persons who report concerns about consensual relationships is prohibited and constitutes a violation of this policy.

k. Free Expression and Academic Freedom

Misericordia University is firmly committed to free expression and academic freedom and to creating and maintaining a safe, healthy, and harassment-free environment for all members of its community. Sex discrimination, sexual misconduct, sexual harassment, and retaliation against members of the University are not protected expression nor the proper exercise of academic freedom. The University will consider principles of free expression and academic freedom in the investigation of reports of sex discrimination, sexual misconduct, sexual harassment, or retaliation that involve an individual's statements or speech.

l. Education and Prevention Programs

Misericordia University is committed to the prevention of sex discrimination, sexual misconduct, and sexual harassment, including sexual violence, through education and awareness programs. The University is also committed to the protection of minors and the prevention of child abuse. Throughout the year the University offers educational programs to promote awareness of sexual harassment, sexual violence, stalking and intimate partner violence. Prevention programs include an overview of the University's policies and procedures, relevant definitions, including prohibited conduct, discussion of the impact of alcohol and illegal drug use, effective consent, safe and positive options for bystander intervention, and information about risk reduction. Incoming first year students and new employees will receive primary prevention and awareness programming as part of their orientation. Misericordia University's Title IX Coordinator and Title IX Deputy Coordinator oversee the education and prevention calendar and tailors programming to campus needs and climate. All educational programs include a review of resources and reporting options available for students, faculty and staff.

m. Pennsylvania Crime Victims Bill of Rights

Information regarding criminal prosecution or investigation can be found at [LINK](#).

Take out the rest once we receive link.

Under Pennsylvania law, victims of crimes possess rights under the Crime Victim Bill of Rights, which is contained in Section 201 - Act of Nov. 24, 1998, P.L. 882, No. 111 Cl. 44 - CRIME VICTIMS ACT.

These rights include:

- To receive basic information concerning the services available for victims of crime.
- To be notified of certain significant actions and proceedings within the criminal and juvenile justice systems pertaining to their case. This paragraph includes all of the following:
 - Access to information regarding whether the juvenile was detained or released following arrest and whether a petition alleging delinquency has been filed.
 - Immediate notification of a juvenile's preadjudication escape from a detention center or shelter facility and of the juvenile's subsequent apprehension.
 - Access to information regarding the grant or denial of bail to an adult.
 - Immediate notification of an adult offender's pretrial escape from a local correctional facility and of the offender's subsequent apprehension.
- To not be excluded from any criminal proceeding unless the court, based on the record before it, determines that testimony by the victim would be materially altered if the victim heard other testimony at the proceeding. Before making a determination, the court shall make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim. The reason for any exclusion shall be clearly stated on the record.

- To be accompanied at all criminal and all juvenile proceedings in accordance with 42 Pa.C.S. § 6336 (relating to conduct of hearings) by a family member, a victim advocate or other person providing assistance or support.
- In cases involving a personal injury crime or burglary, to submit prior comment to the prosecutor's office or juvenile probation office, as appropriate to the circumstances of the case, on the potential reduction or dropping of any charge or changing of a plea in a criminal or delinquency proceeding, or, diversion of any case, including an informal adjustment or consent decree.
- To have opportunity to offer prior comment on the sentencing of a defendant or the disposition of a delinquent child, to include the submission of a written and oral victim impact statement detailing the physical, psychological and economic effects of the crime on the victim and the victim's family. The written statement shall be included in any predisposition or presentence report submitted to the court. Victim-impact statements shall be considered by a court when determining the disposition of a juvenile or sentence of an adult.
- To have notice and to provide prior comment on a judicial recommendation that the defendant participate in a motivational boot camp pursuant to the act of December 19, 1990 (P.L.1391, No.215), known as the Motivational Boot Camp Act.
- Upon request of the victim of a personal injury crime, to have the opportunity to submit written comment or
- present oral testimony at a disposition review hearing, which comment or testimony shall be considered by the court when reviewing the disposition of the juvenile.
- To be restored, to the extent possible, to the precrime economic status through the provision of restitution, compensation and the expeditious return of property which is seized as evidence in the case when in the judgment of the prosecutor the evidence is no longer needed for prosecution of the case.
- In personal injury crimes where the adult is sentenced to a State correctional facility, to be:
 - Given the opportunity to provide prior comment on and to receive State postsentencing release decisions, including work release, furlough, parole, pardon or community treatment center placement;
 - Provided immediate notice of an escape of the adult and of subsequent apprehension; and
 - Given the opportunity to receive notice of and to provide prior comment on a recommendation sought by the Department of Corrections that the offender participate in a motivational boot camp pursuant to the Motivational Boot Camp Act.
- In personal injury crimes where the adult is sentenced to a local correctional facility, to:
 - Receive notice of the date of the release of the adult, including work release, furlough, parole, release from a boot camp or community treatment center placement; and
 - Be provided with immediate notice of an escape of the adult and of subsequent apprehension.
- If, upon the request of the victim of a personal injury crime committed by a juvenile, the juvenile is ordered to residential placement, a shelter facility or a detention center, to:
 - Receive prior notice of the date of the release of the juvenile, including temporary leave or home pass.
 - Be provided with:
 - Immediate notice of an escape of the juvenile, including failure to return from temporary leave or home pass; and
 - Immediate notice of reapprehension of the juvenile.
 - Be provided with notice of transfer of a juvenile who has been adjudicated delinquent from a placement facility that is contrary to a previous court order or placement plan approved at a disposition review hearing and to have the opportunity to express a written objection prior to the release or transfer of the juvenile.

- If the adult is subject to an order under 23 Pa.C.S. Ch. 61 (relating to protection from abuse) and is committed to a local correctional facility for a violation of the order or for a personal injury crime against a victim protected by the order, to receive immediate notice of the release of the adult on bail.
- To receive notice if an adult is committed to a mental health facility from a State correctional institution and notice of the discharge, transfer or escape of the adult from the mental health facility.
- To have assistance in the preparation of, submission of and follow-up on financial assistance claims to the bureau.
- To be notified of the details of the final disposition of the case of a juvenile consistent with 42 Pa.C.S. § 6336(f). ((12) amended June 28, 2019, P.L.213, No.23)
- Upon the request of the victim of a personal injury crime, to be notified of the termination of the court's jurisdiction.

For further information and the complete text of the Pennsylvania Crime Victim Bill of Rights, see [PA Crime Victims Bill of Rights](#).

n. Other Relevant University Policies

Because of the nature of sexual misconduct, it is important to note that the University has other policies which interface with the Sexual Misconduct & Sexual Harassment Policy. These include the Professional Ethics Statement and Faculty Grievance Procedure: Faculty Handbook, the Rules and Regulations for Staff, Affirmative Action Policy, Student Life Policies and the Campus Safety Handbook.

V. Definitions

Advisor - An individual who provides support, guidance, and/or assistance to the complainant or responding party throughout the University Sexual Misconduct Complaint Resolution Process and/or the Title IX Grievance Process. Complainants and respondents have the right to select an advisor of their choice. Advisors may be a friend, mentor, family member, attorney, or any other supporter a party chooses to advise them who is both eligible and available. Advisors are required during the Title IX hearing process. If a party does not have an advisor present at the Title IX hearing process, Misericordia University will provide the party with an advisor.

Complaint - A document that initiates the **University Sexual Misconduct Complaint Resolution Process**, as outlined in Section VI.4. of this policy, against a respondent alleging sexual misconduct. For more information about how to file a complaint, see Section VI.4. of this policy.

Complainant - An individual who is alleged to be the victim of conduct that could constitute sexual misconduct or sexual harassment. A complainant may, but is not required to be, a student, employee, or other Misericordia University community member.

Education Program or Activity - All of the operations of Misericordia University, which may be on or off campus, as well as locations, events, or circumstances over which the University exercises substantial control over both the respondent and the context in which an incident of sexual harassment occurs.

Misericordia University's education program or activity also extends to operations which include computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of the University.

Formal Complaint - A document that initiates the grievance process outlined in this policy against a

respondent alleging Title IX sexual harassment. A formal complaint must be filed by the complainant or signed by the Title IX coordinator alleging sexual harassment against a respondent and requesting that Misericordia University investigate the allegation of sexual harassment. At the time of filing a formal complaint, the complainant must be participating in or attempting to participate in an education program or activity at Misericordia University. A formal complaint may be a document or electronic submission sent via email that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the complaint.

Submission of a formal complaint to Misericordia University is not equivalent to filing charges with law enforcement and does not require a complainant to file charges with law enforcement.

Report - Notice, either written or oral, provided to the Title IX Coordinator of an alleged incident of sex discrimination, sexual harassment, or sexual misconduct. Any person, regardless of whether or not the person reporting the alleged incident is the person alleged to be the victim the incident may report sex discrimination, sexual misconduct or sexual harassment. Reports may be made at any time, including during non-business hours, in person, by mail to the office address listed for the Title IX Coordinator, by telephone, by email, or any other means that result in the Title IX Coordinator receiving a person's written or verbal report. Individuals may also complete and submit the University's online Incident Reporting Form, which can be found at: https://cm.maxient.com/reportingform.php?MisericordiaUniv&layout_id=3

A report is distinguished from a formal complaint or complaint as defined above.

Respondent - An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment or sexual misconduct.

Responsible Employees - Employees who have been given the duty of reporting incidents of sex discrimination, sexual misconduct, and sexual harassment by members of the University community (students, staff, faculty, guests, visitors) to the Title IX Coordinator or other appropriate University designees, or whom a reporting party could reasonably believe have this authority or duty. Responsible Employees who receive information or a report about any act that potentially constitutes sexual misconduct or sexual harassment must further report that information to the Title IX Coordinator.

The following employees of the University are Responsible Employees:

- President, Vice Presidents, Deans, Assistant and Associate Vice Presidents, and Department Chairs and individuals who directly report to any of these roles
- Faculty
- Athletic Director, Coaches, Assistant Coaches, Graduate Assistants and other Athletics Department employees
- All Residence Directors, Resident Advisors, Area Coordinators and Community Living Assistants
- Anyone who directly supervises students, student workers, faculty or other staff
- Managers, coordinators, program heads, directors (including assistant or associate positions)
- All staff in Enrollment Management and Student Life
- Academic Advisors, and all staff in the Student Success Center

- All staff in the Human Resources Department
- Campus Safety & Security Department Staff and Facilities staff
- Individuals designated as Campus Security Authorities under the Clery Act

In addition, Responsible Employees are expected to make every effort to explain their duty to report to anyone disclosing, or about to disclose, information to them.

Preponderance of Evidence - The standard of evidence used to determine if a Title IX policy violation occurred. Misericordia University uses a "preponderance of evidence" standard, which means that the evidence demonstrated in the grievance process demonstrates that it is more likely than not that the alleged conduct or policy violation occurred.

Sexual Assault Response Team (SART) - Trained professionals from the Misericordia community that assist individuals who are dealing with recent or past experiences or who are supporting their friends, family or loved ones who are dealing with sexual misconduct of any kind.

Supportive Measures - Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or 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 Misericordia University's education programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or deter sexual misconduct or sexual harassment. For more information about Supportive Measures, see to Section IV.4. of this policy.

VI. Procedures

Sexual assault, harassment, and other forms of sexual misconduct can have profound impacts on personal, professional, and academic life. The University urges anyone who has experienced sexual misconduct of any kind to take action to seek the help and support that is needed. This help may include seeking assistance from a medical provider, making a report and pursuing disciplinary and/or criminal action with law enforcement immediately after an incident of sexual assault, rape, stalking, domestic violence or dating violence, whether or not the individual plans to pursue criminal action. This is the best option to ensure preservation of evidence and to begin a timely response by law enforcement and/or the University. The decision of how to proceed is up to the individual, unless the situation involves an immediate or ongoing risk to an individual's safety or the safety of the community.

Individual experiences of sexual misconduct vary widely, as do people's needs. At Misericordia, an individual has choices about what to do and when, and a variety of people who can explain options and provide support.

1. Safety First

If an individual has experienced physical or sexual violence, it is important to seek medical treatment as soon as possible. An individual who has experienced a sexual assault within the past 120 hours should strongly consider having physical forensic evidence collected at the time of a medical examination. A member of the University's SART team can help guide the person through this process.

2. Options

A complainant, respondent, or witness has many options, including counseling and support services. Information regarding contact information for local law enforcement as well as contact information for

Confidential Resources that are available to provide support to individuals and witnesses are described in further detail under "IV The Policy, Section 4. (e) Resources.

After consulting a Confidential Resource as appropriate, a complainant may:

- Request supportive measures from the University Title IX Coordinator;
- Report the incident;
- File a formal complaint with the University Title IX Coordinator, thereby invoking the University's internal grievance process;
- Contact the Department of Safety & Security for assistance in filing a criminal complaint and preserving physical evidence; and/or
- Contact local law enforcement to file a criminal complaint. At the complainant's request, the University will assist the complainant in contacting local law enforcement and will cooperate with law enforcement agencies if a complainant decides to pursue a criminal process.

An individual may pursue some or all of these steps at the same time. When initiating any of the above, an individual does not need to know whether they wish to request any particular course of action, nor how to label what happened. Before or during this decision-making process, complainants and other reporting individuals are encouraged to consult a Confidential Resource.

It is important to note that by reporting an incident, the individual alerts the University and enable others to respond appropriately both to the case and to broader patterns of concerning behavior. Reporting also allows you to discuss options and gives an individual access to various accommodations. Making a report does not ordinarily commit an individual to pursuing a complaint.

It is important to understand the different reporting responsibilities of University community members. Some community members are designated as **Confidential Resources**, meaning that they will not report personally identifying information shared with them about Sexual Harassment to the Title IX Coordinator. Some individuals are **Responsible Employees** and are required by the university to promptly share all information about potential violations of this Policy with the Title IX Coordinator. If a reporting party is uncertain about whether someone with whom they want to discuss a report is a Responsible Employee or serving as a Confidential Resource, the reporting party is encouraged to ask directly before disclosing.

"Responsible Employees" are **university community members who are required by this Policy to promptly report** any information they learn about potential violations of this Policy to the university's Title IX Coordinator. Unless identified and acting as a Confidential Resource, Responsible Employees include:

- President, Vice Presidents, Deans, Assistant and Associate Vice Presidents, and Department Chairs and individuals who directly report to any of these roles
- Faculty
- Athletic Director, Coaches, Assistant Coaches, Graduate Assistants and other Athletics Department employees
- All Residence Directors, Resident Advisors, Area Coordinators and Community Living Assistants
- Anyone who directly supervises students, student workers, faculty or other staff
- Managers, coordinators, program heads, directors (including assistant or associate positions)
- All staff in Enrollment Management and Student Affairs
- Academic Advisors and all staff in the Student Success Center

- All staff in the Human Resources Department
- Campus Safety & Security Department Staff and Facilities staff
- Individuals designated as Campus Security Authorities under the Clery Act

A. University Community Members' Reporting Obligations

Responsible Employees must report all known information, including the identities of the parties, the date, time, and location, and any details about the reported incident to the Title IX Coordinator. Responsible Employees may provide support and assistance to a Complainant, witness, or Respondent, but they cannot promise confidentiality or withhold information about Sexual Harassment. Failure by a Responsible Employee to report suspected or alleged Sexual Harassment in a timely manner may subject them to appropriate discipline, including removal from a position or termination of employment.

Responsible Employees may be required to report information disclosed at public awareness events (e.g., "Take Back the Night," candlelight vigils, protests, "survivor speak-outs" or other public forums in which students may disclose Sexual Harassment); or during an individual's participation as a subject in an Institutional Review Board-approved human subjects research protocol (IRB research). Responsible Employees who learn, or anticipate learning, of conduct prohibited by this Policy during a public awareness event or through an IRB-approved human subject research must consult with the Title IX Coordinator regarding their obligation to disclose such information.

In addition, a Responsible Employee may choose not to make a report concerning a matter in which only they themselves would be a Complainant, even though the matter would otherwise fall within their reporting obligations.

All Other Employees not designated as Confidential Resources or Responsible Employees **are encouraged** to report any suspected violation of this Policy to the university's Title IX Coordinator.

3. Reporting Sex Discrimination, Sexual Misconduct & Sexual Harassment

Any person may report an incident(s) of sex discrimination, sexual misconduct, or sexual harassment to the Title IX Coordinator. The reporting party may be the person directly affected by the alleged incident (referred to as "complainant") or a third-party. Complainants and third-party reporters are encouraged to report sex discrimination, sexual misconduct, and sexual harassment as soon as possible to allow the University to respond promptly and effectively. There is no time limit on reporting violations of this policy. If the respondent is no longer a student or employee, the University will still provide supportive measures to the complainant and take steps to end the harassment, prevent its recurrence, and address its effects. However, the University may be unable to initiate a grievance or complaint resolution process if the respondent is no longer a student or employee, and therefore will not be able to take disciplinary action against the respondent.

Reports of sex discrimination, sexual misconduct, and sexual harassment may be written or verbal and may be made at any time (including non-business hours) in person, by using the telephone number or email address, or by mail to the office address, of the Title IX Coordinator. Individuals may complete the online Incident Reporting Form at: https://cm.maxient.com/reportingform.php?MisericordiaUniv&layout_id=3

The contact information of Misericordia University's Title IX Coordinator & Title IX Deputy Coordinator is as

follows:

For incidents involving employees:

Pamela Parsnik
Director of Human Resources & Title IX Coordinator
Mercy Hall, Ground Floor
301 Lake Street Dallas, PA 18612
Phone: (570) 674-6310
Email: pparsnik@misericordia.edu

For incidents involving students:

Kathleen Foley
Vice President of Student Life & Title IX Deputy Coordinator
301 Lake Street Dallas, PA 18612
Phone:(570) 674-6803
Email: kfoley@misericordia.edu

When the Title IX Coordinator receives notice through a report (either written or oral), complaint, or formal complaint of an alleged incident of sex discrimination, sexual misconduct, or sexual harassment, the Title IX Coordinator or Title IX Deputy Coordinator will promptly contact the complainant to:

- A. Discuss the availability of supportive measures, as defined in this policy;
- B. Consider the complainant's wishes with respect to supportive measures;
- C. Inform the complainant of the availability of supportive measures with or without filing a complaint or formal complaint;
- D. Explain to the complainant the:
 - i. Misericordia University procedures for handling non-sexual harassment sex discrimination;
 - ii. Process for filing a complaint to initiate the University Sexual Misconduct Complaint Resolution Process, as outlined in Section VI.4. of this policy; and
 - iii. Process for filing a formal complaint to initiate the Title IX Grievance Process, as outlined in Section VI.5. of this policy.

Additionally, the University will:

- Assess the nature and circumstances of the allegation;
- Address the complainant's immediate physical safety & emotional well-being;
- Notify the complainant of the right to contact or decline to contact law enforcement if the conduct is criminal in nature, and if requested, assist them with notifying law enforcement;
- Notify the complainant of the availability of medical treatment to address physical and mental health concerns and to preserve evidence;
- Notify the complainant of the importance of preservation of evidence;
- Enter the report into the University's daily crime log as required by the Clery Act;
- Assess the reported conduct for the need for a timely warning under the Clery Act;
- Discuss the complainant's expressed preference for manner of resolution and any barriers to proceeding;
- and
- Explain the University's policy prohibiting retaliation.

The Title IX Coordinator will conduct a preliminary assessment of the report, complaint, or formal complaint to assist the complainant in determining which grievance process or complaint resolution process the complainant may initiate.

In addition to reporting an incident of sex discrimination, sexual misconduct, or sexual harassment to the Title IX Coordinator, individuals have the following reporting options:

a. Reporting to Responsible Employees

A person may report an alleged incident of sex discrimination, sexual misconduct, or sexual harassment to a Misericordia University Responsible Employee, as defined in Section V. of this policy. Responsible employees are listed above in Section VI.1. Responsible Employees must report the alleged incident to the Title IX Coordinator or appropriate University designees.

b. Reporting to Local Law Enforcement

The University encourages anyone who has experienced sexual misconduct or sexual harassment to pursue criminal action for incidents that may also be crimes under applicable criminal statutes. Law enforcement officers are trained in handling sexual assault and other cases involving sexual misconduct and harassment. Reporting to law enforcement does not require prosecution of the offense and the reporting party's wishes will be taken into account by law enforcement. The police report and any supporting evidence may be turned over to the District Attorney's Office of the appropriate county which decides whether there is sufficient evidence to prosecute. Information about the law enforcement process of reporting, the investigation, arrests, filing of charges, hearings, the trial and sentencing will be explained at the time of the report. Misericordia University employees will assist the reporting party in contacting local law enforcement, if explicitly requested by the reporting party. However, reporting an incident of sexual misconduct or sexual harassment to the University does not in any way equate to reporting the incident to local law enforcement. An individual may decide to report an incident exclusively to the University, exclusively to local law enforcement, or to both the University and local law enforcement.

Should an individual report an incident of sexual misconduct or sexual harassment to both the University and local law enforcement, the University will comply with law enforcement requests for cooperation. Such cooperation may require Misericordia University to temporarily suspend its own investigation into the alleged incident while local law enforcement gathers evidence. During this time, Misericordia University will continue to offer supportive measures to the complainant. As soon as local law enforcement or the University determines that a delay is no longer necessary, the University will promptly resume its Title IX or sexual misconduct investigation.

Misericordia University policy, definitions, and standard of proof differ from Pennsylvania criminal law. Neither law enforcement's determination whether to prosecute a respondent nor the outcome of any criminal prosecution will determine whether sexual misconduct or sexual harassment has occurred under this University policy. Proceedings under this policy may be carried out prior to, simultaneously with or following civil or criminal proceedings off campus.

Contact information for local police departments:

Dallas Township Police Department (Dallas Campus)

(570) 674-2003 or 911

Dallas Borough Police Department (Dallas Campus)

(570) 674-0161 or 911

Moon Township Police Department (Pittsburgh Campus)

(412) 262-5000 or 911

c. Anonymous Reporting

Misericordia University permits anonymous parties to report alleged incidents of sex discrimination, sexual misconduct, and/or sexual harassment by telephone or by mail to the office of the Title IX Coordinator.

Anonymous reports can also be made online by using Incident Reporting Form found on the Student Life tab on e-MU. This allows direct interaction with the Title IX Coordinator and Title IX Deputy Coordinator without providing identifying information. This form can be accessed at: https://cm.maxient.com/reportingform.php?MisericordiaUniv&layout_id=3

If the anonymous report contains the identity of the complainant, upon receipt of the report, the Title IX Coordinator will contact the complainant to offer supportive measures and explain the process for filing a complaint or formal complaint. However, if the anonymous report does not contain the identity of the complainant, the University will be unable to contact the complainant to offer supportive measures. While the Title IX Coordinator will keep confidential the complainant's identity (unless disclosing the complainant's identity is necessary to provide supportive measures for the complainant, such as issuing no-contact orders), the Title IX Coordinator must know the identity of the complainant to offer such supportive measures.

As with all other reports, all anonymous reports will go to the Title IX Coordinator for review and appropriate response and action. Where there is sufficient information, the University will ensure that anonymous reports are reviewed and included for compliance with the Clery Act.

d. Reports Against Non-University Community Members

If a report is made against someone who is not a member of the University community (including an individual who has graduated from a University program), the Title IX Coordinator or Title IX Deputy Coordinator will assist the complainant in identifying appropriate supportive measures and will assist in contacting the appropriate law enforcement authorities if the individual would like to file a report.

e. Protection of Minors and Mandatory Reporting of Suspected Child Abuse

Under Pennsylvania law, any persons employed by a private institution of higher education who, in their professional or official capacity, have reason to suspect that a child is an abused or neglected child, are required to report the matter immediately to child protective services. The University also requires that the information be immediately shared with the Title IX Coordinator, the Title IX Deputy Coordinator and the Director of Campus Safety so that the University can ensure timely compliance with this law and enhance the protection of children.

The University will report all suspected child abuse and neglect, including sexual assault, to law enforcement and/or to ChildLine, a toll-free child abuse and neglect hotline at 1-800-932-0313.

It is the University's intent to act quickly regarding all suspected child abuse. For the purposes of this reporting obligation, a child is any individual under the age of 18, and the suspected abuse may involve physical, sexual or other forms of abuse or neglect, regardless of the identity of the suspected perpetrator. The duty to report is triggered by reasonable suspicion or belief. There is no requirement that you have actual evidence of abuse, nor is it the responsibility of any employee, student, or volunteer to investigate suspected child abuse. This is the role of child protective services and law enforcement authorities, who are best positioned to do so.

A report should be made as follows:

If a child is in immediate danger, call the police (911).

If there is no immediate danger, call:

- Misericordia University Office of Campus Safety: (570) 674-6300
- Misericordia University Title IX Coordinator: (570) 674-6310

These individuals will assist in making the mandated child protective services report to:

- Dallas Township Police Department: (570) 674-2003 or 911
- Moon Township Police Department: (412) 262-5000 or 911
- ChildLine: 1 (800)-932-0313

In the event that the abuse was not alleged to have occurred in Pennsylvania, Campus Safety and the Title IX Coordinator will assist in identifying the correct jurisdiction for reporting.

4. Preliminary Assessment

Upon receiving a report, complaint or formal complaint of an alleged incident of sex discrimination, sexual misconduct, or sexual harassment, the Title IX Coordinator will conduct a preliminary assessment to determine the University's response using the following threshold criteria:

1. Would the incident be considered "sexual harassment" under Title IX, as defined in Section IV.3.c. of this policy?
 - a. In assessing the type of incident, the Title IX Coordinator will determine if the alleged conduct was either:
 - i. Quid pro quo harassment (involving a University employee);
 - ii. Sexual Assault, Dating Violence, Domestic Violence, or Stalking; or
 - iii. Unwelcome conduct that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to a University program or activity
2. Did the incident occur in Misericordia University education program or activity, as defined in this policy?
3. Did the incident occur in the United States?

If the answer is "yes" to the three threshold criteria, the incident may constitute sexual harassment under Title IX, and the complainant may initiate the Title IX Formal Complaint & Grievance Process, as outlined in Section VI.5. of this policy.

If the answer is "no" to any of these questions, the alleged incident may be considered one or more of the following forms of conduct and addressed accordingly:

1. Non-sexual harassment sex discrimination: Misericordia University complaint procedures for handling incidents of sex discrimination can be found in applicable University policies for students, staff or faculty.
2. Sexual Misconduct: Incidents of sexual misconduct will be addressed using the University Sexual Misconduct Complaint Resolution Process, as outlined in Section VI.4. of this policy.
3. Non-actionable: Complainant may request and the University may provide supportive measures as appropriate

After conducting the assessment, the Title IX Coordinator or Title IX Deputy Coordinator will send a written

notification of their preliminary assessment to the complainant.

The complainant may appeal the Title IX Coordinator's preliminary assessment of the alleged incident to the University President within 10 days of receiving written notice from the Title IX Coordinator or Title IX Deputy Coordinator. If a formal complaint or complaint is filed, the respondent may appeal the Title IX Coordinator's preliminary assessment to the University President within 10 days of receiving the complaint.

Complainants may request supportive measures or an investigation into allegations of conduct that do not meet Title IX jurisdictional conditions under Section VI.4. of this policy.

Regardless of whether an alleged incident is determined to constitute sexual harassment, sexual misconduct, or sex discrimination, and regardless of whether or not the complainant files a formal complaint under Title IX or a complaint of sexual misconduct under this policy, the University will provide supportive measures to the complainant.

5. University Sexual Misconduct Complaint Resolution Process

a. Filing a Sexual Misconduct Complaint

Complainants may file a complaint with the Title IX Coordinator or Title IX Deputy Coordinator to initiate the University's sexual misconduct complaint resolution process. If a complainant files a complaint directly with the Title IX Coordinator or Title IX Deputy Coordinator rather than submitting a report, the University will promptly contact the complainant to provide supportive measures and additional information as referenced in Section VI.4. of this policy.

The University will treat complainants and respondents equally and equitably during the sexual misconduct complaint resolution process by providing the complainant and respondent with supportive measures throughout the complaint resolution process, following the complaint resolution process before imposing any disciplinary sanctions (or other actions that are not supportive measures) against a respondent, and providing remedies to a complainant where a determination of responsibility for sexual misconduct has been made against a respondent.

The University's sexual misconduct complaint resolution process relies upon an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence. The University applies the preponderance of the evidence standard which means that the evidence demonstrated in the complaint resolution process must demonstrate that it is more likely than not that the alleged conduct or policy violation occurred. The University applies the same standard of evidence for formal complaints against students and employees, including faculty, and applies the same standard of evidence to all formal complaints of sexual harassment.

Determination of a party's credibility will not be based on a person's status as a complainant, respondent, or witness. The University presumes that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is reached at the conclusion of the complaint resolution process.

i. Conflicts of Interest

Parties have the opportunity to raise the issue of a potential conflict of interest within two (2) days of being advised of the identity of the investigator, Sanction Officer, panel member, or appeal officer. The Title IX

Coordinator or Title IX Deputy Coordinator will determine whether a conflict of interest exists. No investigator, Sanction Officer, panel member or appeal reviewer will make findings or determinations in a case in which they have a conflict of interest.

ii. Burden of Proof

The burden of proof refers to who has the responsibility of showing a violation has occurred. It is always the responsibility of Misericordia University to satisfy the burden of proof. Neither the complainant nor respondent have to prove that a violation did or did not occur. Complainants and respondents may decide not to share their side of the story or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from the University and does not indicate responsibility. Additionally, the Sanction Officer shall not make an adverse inference against a complainant or respondent for the party's refusal to participate in an investigation or hearing, nor will the respondent's refusal to participate result in increased sanctions if the respondent is found responsible for the accusations.

iii. Timeframe for Sexual Misconduct Complaint Resolution Process

Misericordia will make every effort to successfully resolve all complaints within ninety (90) days. In general, a complainant and respondent can expect that the process will proceed according to the time frames provided in this policy. However, any timeframe expressed in this policy, including the 90 days, may be extended for good cause with written notice to the parties of the delay and the reason for the delay. Good cause may exist for a variety of factors, including the complexity of the circumstances of each case, the integrity and completeness of the investigation, to comply with a request by external law enforcement, to accommodate the availability of witnesses, to account for University breaks or vacations, or to address other legitimate reasons.

Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness. All parties involved are entitled to periodic status updates on the progress of the complaint and any subsequent appeals.

iv. Right to an Advisor

During any investigation, the complainant and respondent have the right to be assisted by an advisor. The advisor cannot be a witness in the investigation. The advisor may accompany the complainant or respondent to any meeting or related proceeding with an investigator or a University employee. The advisor is a silent and non-participating presence who is there solely to observe and provide moral support during the investigative process. Any person who serves as an advisor should plan to make themselves available for meetings throughout the process.

The complainant and respondent have the right to be assisted by an advisor of their choice. To serve as an advisor, the individual will be required to meet with the Title IX Coordinator or Title IX Deputy Coordinator in advance of participating in the investigation to understand the expectations of the role, privacy, and appropriate decorum. The Title IX Coordinator or the Title IX Deputy has the right at all times to determine what constitutes appropriate behavior on the part of an advisor. No copies of written materials or any other evidence will be given to an advisor, although the parties may share such information with an advisor as necessary to assist them in the proceedings.

v. Supportive Measures

The University will provide the complainant and respondent with supportive measures throughout the complaint resolution process, as appropriate. More information about Supportive Measures can be found in

Section IV.4. of this policy.

b. Sexual Misconduct Complaint Resolution Process

i. Initial Inquiry & Meeting

Upon receipt of a complaint, the Title IX Coordinator or Title IX Deputy Coordinator will contact the complainant to offer supportive measures and conduct an initial inquiry to determine if the allegations, if true, would rise to the level of a violation of the University's policy.

The possible next steps include the following:

1. A decision to close the case when insufficient evidence exists to move forward or because the allegation, even if proven, would not violate University policy;
2. Remedies-based resolution that does not involve an investigation or disciplinary action against a respondent;
3. Formal Resolution to determine responsibility, whether disciplinary action is warranted, and the appropriate disciplinary sanctions. This process begins with an investigation to gather all relevant facts and determine if there is sufficient information to refer the complaint for disciplinary action.

Each resolution process is guided by the same principles of fairness and respect for all parties. All individuals who violate these standards will be held accountable for their behavior through a process that protects the rights of both the complainant and the respondent. Resources are available for both students and employees, whether as complainants, respondents or third parties, to be provided with support and guidance throughout the investigation and resolution of the complaint.

Generally, the Title IX Deputy Coordinator (for student complaints) or Title IX Coordinator (for employee complaints) will schedule a preliminary meeting with the complainant to discuss the complaint. In the course of this assessment, the University will consider the interest of the complainant and the complainant's expressed preference for manner of resolution. Where possible and as warranted by an assessment of the facts and circumstances, the University will seek action consistent with the complainant's request.

The initial inquiry and meeting will proceed to the point where a reasonable assessment of the safety of the individual and of the campus community can be made, and the University has sufficient information to determine the best course of action.

At the conclusion of the Initial Inquiry & Meeting, the Title IX Coordinator or the Title IX Deputy Coordinator will suggest an appropriate manner of resolution, which may include remedies-based actions (which require the voluntary participation of the complainant and respondent) or the initiation of an investigation to determine if disciplinary action is warranted. It is at the discretion of the Title IX Coordinator or Title IX Deputy Coordinator to recommend which method of resolution is appropriate. Any individual wishing to explore remedies-based resolution methods is encouraged to discuss these options with the Title IX Coordinator or Title IX Deputy Coordinator.

The complainant will receive a written notice of the determination how to proceed. Depending on the circumstances and requested resolution, the respondent may or may not be notified of the report or resolution. A respondent will be notified when the University seeks action that would impact a respondent, such as protective measures that restrict the respondent's movement on campus, the initiation of the complaint resolution process and subsequent investigation, or the decision to request the respondent's involvement in remedies-based resolution.

ii. Weighing the Complainant's Request Not to Proceed

The University will seek action consistent with the complainant's request where possible. Where a complainant makes a report but requests that a name or other identifiable information not be shared with the respondent or that no investigation or formal action be taken, the University will balance this request with its dual obligation to provide a safe and non-discriminatory environment for all Misericordia University community members and to remain true to principles of fundamental fairness that require notice and an opportunity to respond before action is taken against a respondent.

In the event that a complainant requests that their name or other identifiable information not be shared with the alleged respondent or does not want to proceed with an investigation or formal resolution, the Title IX Coordinator or the Title IX Deputy Coordinator will balance this request against the following factors:

- The nature and scope of the alleged conduct, including whether the reported misconduct involves the use of a weapon
- The respective ages and roles of the complainant and the respondent;
- The risk posed to any individual or to the campus community by not proceeding, including the risk of additional violence;
- Whether there have been other reports of misconduct by the respondent;
- Whether the report reveals a pattern of misconduct (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group;
- The complainant's wish to pursue disciplinary action;
- Whether the University possesses other means to obtain relevant evidence;
- Considerations of fundamental fairness and due process with respect to the respondent should the course of action include disciplinary action against the respondent, and
- The University's obligation to provide a safe and non-discriminatory environment.

The University will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation, but its ability to do so may be limited based on the nature of the request by the complainant. The University will assess any barriers to proceeding, including retaliation, and will inform the complainant that this policy prohibits retaliation and the University will take strong responsive action to protect the complainant. Where the University is unable to take action consistent with the request of the complainant, the Title IX Coordinator or Title IX Deputy Coordinator will communicate with the complainant about the University's chosen course of action, which may include the University choosing to pursue action against a respondent on its own behalf. Alternatively, the course of action may also include steps to limit the effects of the alleged misconduct and prevent its recurrence that do not involve formal disciplinary action against a respondent or revealing the identity of the complainant.

iii. Remedies-Based Resolution

Remedies-based resolution is an informal approach designed to eliminate a hostile environment without taking disciplinary action against a respondent. Where the Initial Inquiry concludes that remedies-based resolution may be appropriate, the University will take immediate and corrective action through the imposition of individual and community remedies designed to maximize the complainant's access to the educational, extracurricular and employment activities at the University and to eliminate a hostile environment. Examples of remedies are provided in Section IV.4. of this policy. Other potential remedies may include targeted or broad-based educational programming or training, supported direct confrontation of the respondent and/or indirect action by the Title IX Coordinator or the University. Depending on the form of remedies-based resolution used, it may be possible to maintain anonymity.

The University will offer mediation for appropriate cases but will not compel a complainant or respondent to engage in mediation, to directly confront the other party, or to participate in any particular form of remedies-based resolution. Mediation, even if voluntary, may not be used in cases involving sexual assault. The decision to pursue remedies-based resolution will be made when the University has sufficient information about the nature and scope of the conduct, which may occur at any time. Participation in remedies-based resolution is voluntary, and a complainant or respondent can request to end remedies-based resolution at any time.

The Title IX Coordinator will maintain records of all reports and conduct referred for remedies-based resolution, which will typically be completed within ninety (90) days of the initial report.

iv. Formal Resolution

Where the Initial Inquiry concludes that an investigation is necessary to determine responsibility and impose sanctions as well as remedies, if appropriate, the University will designate an investigative team who has specific training and experience investigating allegations of sexual misconduct. The investigative team may be an employee of the University or an external investigator engaged to assist the University in its fact gathering. Generally, the University will use a team of two investigators. Any investigator chosen to conduct the investigation must be impartial and free of any actual conflict of interest and bias.

The investigative team will conduct the investigation in a manner appropriate in light of the circumstances of the case. The investigative team will coordinate the gathering of information from the complainant, the respondent, and any other individuals who may have information relevant to the determination. The investigative team will also gather any available physical evidence, including documents, communications between the parties, and other electronic records as appropriate. In gathering the facts, the investigative team may consider prior allegations of, or findings of responsibility for, similar conduct by the respondent to the extent such information is relevant. The complainant and respondent will have an equal opportunity to be heard, to submit information, and to identify witnesses who may have relevant information. Witnesses must have observed the acts in question or have information relevant to the incident and cannot be participating solely to speak about an individual's character.

The investigation is designed to provide a fair and reliable gathering of the facts. The investigation will be thorough, impartial and fair, and all individuals will be treated with appropriate sensitivity and respect. As described in the Privacy, Confidentiality, and Privilege Section IV.4. of this policy, the investigation will be conducted in a manner that is respectful of individual privacy concerns.

Throughout the investigation and resolution, a complainant or respondent may have an advisor present at any meeting related to the investigation.

The University will seek to complete the complaint resolution process (investigation and resolution) within ninety (90) days of receiving the complaint, but as detailed above, may extend this time frame for good cause with notice to both parties. If there is a concurrent criminal investigation, at the request of law enforcement, the University may agree to defer its fact-gathering until after the initial stages of a criminal investigation. The University will nevertheless communicate with the complainant regarding their rights, procedural options and the implementation of supportive measures to assure the safety and well-being of all affected individuals. The University will promptly resume its investigation as soon as law enforcement has released the case for review following the initial criminal investigation.

Information gathered during the review or investigation will be used to evaluate the responsibility of the respondent, provide for the safety of the complainant and the University campus community, and take

appropriate measures designed to end the misconduct, prevent its recurrence and address its effects.

v. Review of Investigation Report

At the conclusion of the investigation, the investigative team will prepare a written report that summarizes the information gathered and synthesizes the areas of agreement and disagreement between the parties and any supporting information or accounts. In preparing the report, the investigative team will review all facts gathered to determine whether the information is relevant and material to the determination of responsibility given the nature of the allegation. In general, the investigative team may redact information that is irrelevant, more prejudicial than probative, or immaterial. The investigative team may also redact statements of personal opinion, rather than direct observations or reasonable inferences from the facts, and statements as to general reputation for any character trait, including honesty.

Before the report is finalized, the complainant and respondent will be given the opportunity to review all information that will be used in reaching a determination of whether the policy has been violated. Consistent with FERPA or safety concerns, identifying information about the complainant, respondent, or third parties may be redacted at the discretion of the Title IX Coordinator. The complainant and respondent may submit any additional comment or evidence to the investigative team within five (5) days of the opportunity to review the report.

Upon receipt of any additional information by the complainant or respondent, or after the five (5) day comment period has lapsed without comment, the investigative team, in consultation with either the Title IX Coordinator or Title IX Deputy Coordinator, will make a finding as to whether there is sufficient information to find, by a preponderance of the evidence, that a policy violation occurred.

vi. Determination Not to Proceed to Disciplinary Action

If the investigative team, in consultation with the Title IX Coordinator or the Title IX Deputy Coordinator, determines that there is insufficient information to find, by a preponderance of the evidence, that a policy violation occurred the matter will be dismissed with no further action. The University will render a decision, in writing, to both parties. Either party may appeal the decision following the appeal procedures outlined in Paragraph 6. below.

vii. Determination to Proceed to Disciplinary Action

If the investigative team, in consultation with the Title IX Coordinator or the Title IX Deputy Coordinator, determines that there is sufficient information to find, by a preponderance of the evidence, that a policy violation occurred, the investigative team will notify the complainant and the respondent in writing and refer the report to the Sanction Officer for disciplinary action. The Sanction Officer will assign sanctions after reviewing the investigative report, impact statements, consulting with the Title IX Coordinator, Title IX Deputy Coordinator and/or other appropriate University administrators, and any other relevant information.

viii. The Sanction Officer

The Sanction Officer may be an internal member of the University community or an external party. Any individual designated by the University must have sufficient training or experience to serve in this capacity. The Sanction Officer may also consult with a panel of individuals from the University or surrounding community in considering additional relevant factors.

The Sanction Officer will be designated based on the role of the respondent:

- For complaints against students, the Sanction officer is typically the Assistant Dean of Students or

designee.

- For complaints against staff, the Sanction officer is typically the Vice President of Finance and Administration or designee.
- For complaints against faculty, the Sanction officer is typically the Vice President of Academic Affairs or designee.
- For a complaint against a student employee who is acting within the scope of his/her employment at the time of the incident, the Sanction officer is typically the Vice President of Finance and Administration or designee.

The Sanction Officer must be a neutral and impartial decision-maker. Any Sanction Officer who has reason to believe they cannot make an objective determination must recuse oneself from the process.

ix. Imposition of Sanction

If the respondent is found responsible, the Sanction Officer will consider the imposition of disciplinary sanctions designed to eliminate the misconduct, prevent its recurrence, and remedy its effects, while supporting the University's educational mission, Code of Conduct, and policies. Disciplinary sanctions or interventions may also serve to promote safety or deter individuals from similar future behavior.

The Sanction Officer is responsible for determining the appropriate disciplinary sanction(s). The Sanction Officer will also consult with the Title IX Coordinator, Title IX Deputy Coordinator, or designee. In reaching this determination, the Sanction Officer will provide the complainant, the respondent and other affected parties, as appropriate, the ability to provide a written impact statement for consideration.

The Sanction Officer may impose disciplinary sanctions deemed appropriate after a consideration of all of the relevant information. The imposition of disciplinary sanctions will take effect immediately and will not be stayed pending the resolution of the appeal. For students, the sanction may include removal from specific courses or activities, removal from University housing, suspension from the University, or expulsion.

For employees, the disciplinary sanctions may include any form of responsive action or progressive discipline as set forth in the Personnel Policies for Staff Handbook, including training, referral to counseling and/or disciplinary action such as warning, reprimand, withholding of a promotion or pay increase, reassignment, temporary suspension without pay or termination.

For a student employee who is acting within the scope of his/her employment at the time of the incident, the disciplinary sanctions may include any permissible disciplinary sanction from Section IV.4. of this policy, Student Code of Conduct, or [Separation from Employment Policy](#).

A list of the range of Disciplinary Sanctions for students, employees, and student employees is in Section IV.4. of this policy.

For tenured faculty or faculty whose stated period of appointment has not expired, a recommendation of termination will implicate Separation, as set forth in the university's policy.

The complainant may be offered Remedies, as referenced in Section IV.4. of this policy.

x. Notice of Outcome

Both the respondent and the complainant will simultaneously receive written notice of outcome and rationale for the outcome. To provide notice of outcome, University-issued email is the primary means of

communication. Alternative methods may include:

- i. In person by the Title IX Coordinator, Title IX Deputy Coordinator, or designated University administrator. This in person communication will be followed by a written communication;
- ii. Mailed to the local or permanent address of the individual as indicated in official University records.

The respondent will be informed of any disciplinary sanctions, the date by which the requirements must be satisfied (if applicable), and the consequences of failure to satisfy the requirements. The complainant will be informed of any disciplinary sanctions that directly relate to the complainant and any remedies. The notice of outcome will also provide each party with their right to appeal the determination.

The University may also notify appropriate University officials, including a direct supervisor of a respondent, as necessary to implement the outcome and/or disciplinary sanctions.

xi. Appeal

Either party may appeal the outcome of the matter. A review of the investigation and resolution will be prompt and narrowly tailored to stated appeal grounds. Dissatisfaction with the outcome of the investigation is not grounds for appeal. The limited grounds for appeal are as follows:

- New information that could affect the finding of the investigative team or Sanction Officer and that was not reasonably available through the exercise of due diligence at the time of the investigation;
- University procedures were not adhered to.

The appeal shall consist of a plain, concise, and complete written statement outlining the grounds for the appeal. The appeal must be submitted within five (5) days of the date of the outcome letter. The appeal form will be attached to the notice of outcome letter.

Upon receipt of the appeal, the Vice President (appointed by the University) will provide the other party notice of the appeal, a copy of the appeal, and the opportunity to respond in writing to the appeal. Any response to the appeal must be submitted within five (5) days from notice to the other party. In the event that both parties initially appeal the findings, each party will be provided notice, a copy of the other party's appeal, and the opportunity to respond.

Upon receipt of the appeal and any response, the Title IX Coordinator and Title IX Deputy Coordinator will be copied on all matters related to the appeal.

The appeal will be conducted in an impartial manner. Generally, a Vice President within the University is the appeals officer. In any request for an appeal, the burden of proof lies with the party requesting the appeal, as the original determination and sanction are presumed to have been decided reasonably and appropriately. The appeal is not a new review of the underlying matter. The appeals officer shall consider the merits of an appeal only on the basis of the two grounds for appeal. The appeals officer will review the written investigation report and all supporting documents and may consult with both parties.

The appeals officer can affirm the original findings, alter the findings, and/or alter the disciplinary sanctions, depending on the basis of the requested appeal. If the appeal is based on procedures not having been followed in a material manner, the appeals officer can ask that a new investigation and/or imposition of disciplinary sanctions occur. In the case of new and relevant information, the appeals officer can recommend that the case be returned to the Sanction Officer to assess the weight and effect of the new information and render a determination after considering the new facts.

The appeals officer will communicate the result of the appeal to the complainant and respondent within ten (10) days from the date of the submission of all appeal documents by both parties. Appeal decisions are final.

c. Additional Considerations

i. Group Infractions

When members of a student group, organization, or team of individuals act collusively in violation of the Sexual Misconduct & Sexual Harassment Policy, they may be charged as a group or as individuals, and an investigation may proceed against the group as joint respondents or against one or more involved individuals as appropriate given available information and the circumstances.

A student group, organization, or team's officers and membership may be held collectively and individually responsible when violations of this policy by the organization or its members take place at organization sponsored events, have received the consent or encouragement of the organization or of the organization's leaders or officers, or was known or reasonably should have been known to the membership or its officers.

In any such action, individual determinations as to responsibility will be made and disciplinary sanctions may be assigned collectively as well as individually and will be proportionate to the involvement of each individual.

ii. Prior Sexual History

A complainant's reputation with respect to chastity or prior sexual history will never be admissible. In addition, a complainant's prior sexual history is generally not relevant and will only be considered during an investigation under limited circumstances:

- Where there is a current or ongoing relationship between the complainant and the respondent, and the respondent alleges that consent was given, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties. As noted in other sections of this policy, however, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent.
- Consistent with Pennsylvania state law, where the prior sexual history is relevant to explain injury or physical finding, proof of motive or pattern, prior sexual history of the complainant with another individual may be considered by the investigative team.

iii. Other Conduct by the Respondent

Where there is evidence of a pattern or conduct similar in nature by the respondent, either before or after the conduct in question, regardless of whether there has been a finding of responsibility, this information may be deemed relevant to the investigative team's determination of responsibility and/or assigning of disciplinary sanctions. The determination of relevance will be based on an assessment of whether:

- The previous incident was substantially similar to the present allegation;
- The information indicates a pattern of behavior and substantial conformity with that pattern by the respondent; or
- The respondent was subject to a previous credible allegation and/or previously found responsible for a policy violation.

In addition, other conduct by a respondent may be relevant to establish intent, motive, absence of mistake or another ground deemed probative by the investigative team.

Any individual seeking to share information about prior sexual history or pattern evidence should bring this information to the attention of the Title IX Coordinator or Title IX Deputy Coordinator at the earliest opportunity.

Where a sufficient informational foundation exists, the investigative team, in consultation with the Title IX Coordinator or Title IX Deputy Coordinator, will assess the relevance, form, and reliability of the information (hearsay will not be permitted) and determine if it is appropriate for consideration in the investigative determination. The University, through the investigative team, may choose to consider this information, with appropriate notice to the parties.

iv. Consolidation of Investigation

The investigative team and Title IX Coordinator or Title IX Deputy Coordinator have the discretion to consolidate multiple reports against a respondent into one investigation if the evidence related to each incident would be relevant in reaching a determination on the other incident.

v. Recordkeeping

The Title IX Coordinator will retain records of all reports, allegations and complaints, regardless of whether the matter is resolved by Initial Inquiry, remedies-based resolution, or formal resolution. Complaints resolved by Initial Inquiry or remedies-based resolutions are not part of a student's conduct file, academic record, or employee's personnel record.

Affirmative findings of responsibility in matters resolved through formal resolution are part of a student's conduct record or an employee's personnel file. Such records shall be used in reviewing any further conduct or in developing disciplinary sanctions and shall remain a part of a student's conduct record or employee's personnel records. In general, records will be maintained for the duration of the respondent's relationship with the University, and may be retained for no less than seven years following the respondent's departure from the University. In allegations involving child abuse or misconduct by employees warranting termination, the records may be kept indefinitely.

6. Title IX Formal Complaint & Grievance Process

a. Filing a Formal Complaint of Sexual Harassment under Title IX

Filing of a formal complaint of an alleged incident of sexual harassment under Title IX initiates the following investigation and grievance process.

If a complainant files a formal complaint directly with the Title IX Coordinator or Title IX Deputy Coordinator rather than submitting a report, the University will promptly contact the complainant to provide supportive measures and additional information as referenced in Section IV.4. of this policy.

i. Who Can File a Formal Complaint?

The complainant or Title IX Coordinator must file the formal complaint.

Third parties cannot file formal complaints. Additionally, fundamental fairness and due process principles require that a respondent be informed of the details of the allegations made against them, to the extent that the details are known, to provide an adequate opportunity for the respondent to respond. Therefore, a complainant cannot remain anonymous and file a formal complaint. However, the Title IX Coordinator will keep confidential the identities of the complainant and respondent (and witnesses) from anyone not involved in the grievance process, except as permitted by FERPA, required by law, or as necessary to conduct the grievance process.

While a formal complaint requires the complainant's identity, Title IX does not require a complainant to identify

the respondent in a formal complaint. If a complainant does not know the respondent's identity and file a formal complaint, the University is still required to investigate the formal complaint because an investigation may reveal the respondent's identity. If the respondent's identity becomes known, the University will send both parties the written notice of allegations, follow the grievance process outlined in this policy, and may impose disciplinary sanctions against the respondent at the conclusion of the grievance process. However, if a respondent's identity remains unknown, the University will be unable to comply with the required grievance process outlined in this policy and therefore unable to impose disciplinary sanctions against the respondent.

Under certain circumstances, the Title IX Coordinator or Title IX Deputy Coordinator may determine that an investigation is necessary, even when the identity of the complainant is unknown or the complainant does not want an investigation. In this case, the Title IX Coordinator may choose to sign a formal complaint and initiate the grievance process. When this occurs, the Title IX Coordinator is not a complainant or otherwise considered a party included in the grievance process. The alleged victim will remain the complainant and be treated as a party in the grievance process. However, the complainant is not required to participate in the grievance process.

ii. How to File a Formal Complaint?

Formal complaints may be submitted in person, by mail, or by email to the Title IX Coordinator, whose contact information is listed in this policy. Formal complaints cannot be filed by telephone.

iii. What is a Formal Complaint?

A formal complaint is a document or electronic submission (such as an email) that contains the complainant's physical or digital signature or otherwise indicates that the complainant is the person filing the complaint.

A formal complaint alleges sexual harassment against a respondent and requests that Misericordia University investigate the allegation of sexual harassment. Therefore, submitting a formal complaint indicates an intentional decision on behalf of the complainant to initiate the Title IX grievance process.

iv. When Can A Formal Complaint be Filed?

There is no time limit on a complainant's decision to file a formal complaint, so the decision to sign and file a formal complaint does not need to occur in the immediate aftermath of an alleged incident or reporting an incident.

However, at the time of filing a formal complaint, the complainant must be participating in or attempting to participate in a University education program or activity.

This requirement does not exclude a complainant who has graduated or is on a leave of absence if the complainant intends to apply to a different University program, intends to remain involved in the University alumni programs and activities, or may intend to re-apply after a leave of absence.

v. Dismissal of a Formal Complaint

The investigation of the conduct alleged in the formal complaint may uncover new information about the incident. In accordance with Title IX, the University must dismiss the formal complaint of sexual harassment under Title IX if at any point during the investigation or hearing process it is determined that the conduct alleged in the formal complaint:

1. Would not constitute sexual harassment as defined under Title IX, even if proven;
2. Did not occur in a Misericordia University education program or activity; or
3. Did not occur against a person in the United States.

Such dismissal does not indicate that a University policy violation did not occur. Therefore, Misericordia University may choose to address such incidents using the University Sexual Misconduct Complaint Resolution Process outlined in Section VI.4. of this policy.

Misericordia University reserves the right to dismiss a formal complaint or allegations therein, if at any time during the investigation or hearing:

1. A complainant notifies the Title IX Coordinator or Title IX Deputy Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
2. The respondent is no longer enrolled or employed by the University;
3. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon dismissal of a formal complaint (either as required or not), Misericordia University will promptly send a written notice of dismissal and reason(s) therefor simultaneously to both parties.

The complainant and respondent have the right to appeal the University's dismissal of the formal complaint or any allegations therein on several bases, as outlined Appeals under Section VI.5. of this policy.

vi. Consolidation of Formal Complaints

The University may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one complainant or more than one respondent, references in this policy to the singular "party," "complainant," or "respondent" include the plural, as applicable.

b. Grievance Process for Formal Complaints under Title IX

i. General Information

The following grievance process complies with 34 CFR § 106.45 of Title IX. All processes, provisions, and rules stated in this policy apply equally to both parties—complainants and respondents.

The University will treat complainants and respondents equally and equitably by providing the complainant and respondent with supportive measures throughout the grievance process, following the grievance process before imposing any disciplinary sanctions (or other actions that are not supportive measures) against a respondent, and providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against a respondent.

The University grievance process relies upon an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence. The University applies the preponderance of the evidence standard which means that the evidence demonstrated in the grievance process demonstrates that it is more likely than not that the alleged conduct or policy violation occurred. The University applies the same standard of evidence for formal complaints against students and employees, including faculty, and applies the same standard of evidence to all formal complaints of sexual harassment.

Determination of a party's credibility will not be based on a person's status as a complainant, respondent, or witness. The University presumes that the respondent is not responsible for the alleged conduct until a determination regarding responsibility at the conclusion of the grievance process.

All Misericordia University employees involved in the Title IX investigation and grievance process have

received the appropriate training to participate in the Title IX grievance process, and training materials have been made publicly available on the University's website. Training topics include, but are not limited to, the definition of sexual harassment under Title IX, steps to conducting a Title IX investigation and grievance process, and how to serve impartially, including by avoiding prejudgment of facts, conflicts of interest, and bias.

If a complainant or respondent believes the University's treatment of a formal complaint of sexual harassment may constitute discrimination on the basis of sex under Title IX, they may file a report of sex discrimination with the Title IX Coordinator.

ii. Conflicts of Interest

Misericordia University employees participating in the Title IX grievance process including the Title IX Coordinator, investigators, decision-makers, and informal resolution facilitators as well as external parties employed by the University to complete Title IX investigation and adjudication functions (hearings, appeals, and informal resolution options) are prohibited from having a conflict of interest or bias for or against complainants or respondents generally or as an individual complainant or respondent.

In an effort to avoid potential conflicts of interest, the University may provide the names and titles of internal and external Title IX investigators and adjudicators to the parties at the initiation of the investigation, informal resolution process, or hearing. Such information will be provided no less than five (5) days before any meeting or hearing between the party and the investigator or adjudicator. The complainant or respondent may request the removal of an investigator or adjudicator on the grounds of personal bias or other conflicts of interest by submitting a written statement to the Title IX Coordinator or Title IX Deputy Coordinator setting forth the basis for the request no more than three (3) days after receiving notice of the identity of the individual involved in the Title IX grievance process. The Title IX Coordinator or Title IX Deputy Coordinator will review the written statement and make a determination if there is a conflict of interest. Appropriate steps will be taken to ensure that no conflict of interest exists on the part of anyone involved in the Title IX investigation, hearing, appeals, or informal resolution processes. If a conflict of interest exists, another individual will be assigned to the appropriate role. If a conflict of interest exists between the complainant or respondent and the Title IX Coordinator or Title IX Deputy Coordinator, reports should be directed to the University president.

iii. Timelines for the Grievance Process

Misericordia University aims to complete the Title IX grievance process, including appeals and informal resolution processes, in a reasonably prompt time frame. Generally, the University will conclude the grievance process within ninety (90), but this time frame may be extended for good cause with written notice to the parties of the delay and the reason for the delay.

The University reserves the right to allow for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of the party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

iv. Right to an Advisor

All parties are entitled to an advisor of their choosing to assist them throughout the Title IX grievance process. The advisor may be a friend, counselor, faculty member, family member, attorney or any other individual a party chooses to advise them who is eligible and available to serve during the grievance process. Any person who may be called as a witness may not serve as an advisor. If a party needs guidance as they select an

advisor, they may contact the Title IX Coordinator for assistance.

Parties are entitled to be accompanied by their advisor in all meetings, interviews, hearings, and appeals at which the party is entitled to be present during the grievance process. Parties are required to have an advisor present at the live hearing in the Title IX grievance process. If a party does not have an advisor available to be present at the live hearing, the University will provide the party with an advisor of the University's choice in the University's sole discretion, who may or may not be an attorney.

The University cannot guarantee equal advisory rights. Consequently, if one party selects an advisor who is an attorney but the other party does not or cannot afford an attorney, the University is not obligated to provide an attorney or other advisor at meetings or interviews. During the Title IX grievance process, the University is required to provide an advisor at the hearing. However, the University is not required to provide an attorney as an advisor at the hearing.

To serve as an advisor, the individual will be required to meet with the Title IX Coordinator or Title IX Deputy Coordinator in advance of participating in the investigation to understand the expectations of the role, privacy, and appropriate decorum. The Title IX Coordinator or Title IX Deputy has the right at all times to determine what constitutes appropriate behavior on the part of an advisor.

All advisors are subject to the same University rules whether they are attorneys or not. Advisors may not present on behalf of their advisee in a meeting or interview. Advisors must conduct all cross-examination of the other party and all witnesses in a live hearing even in the event that the advisee is not present at the live hearing.

Advisors should request or wait for a break in the interview, hearing, or meeting if they wish to interact with University Title IX personnel. Advisors may confer quietly with their advisees as necessary, as long as they do not disrupt the process. For longer or more involved discussions, the parties and their advisors should ask for breaks or step out of meetings to allow for private conversation.

Any advisor who fails to follow the guidelines established by the University in the grievance process will be provided an oral warning. If the advisor continues to disrupt or otherwise fails to follow those guidelines, the advisor will be asked to leave the proceeding. If an advisor is asked to leave, the meeting, interview, hearing or other proceeding will be suspended until the party advisor is reinstated; the party secures another advisor to accompany them at that meeting, interview, hearing or proceeding; or the University provides the party with another advisor for the hearing.

If an advisor is asked to leave a proceeding, the Title IX Coordinator will determine whether the advisor may be reinstated or must be replaced by a different advisor for the remainder of the grievance process.

The parties must advise the Title IX Coordinator of the identity of their advisor at least two (2) days before the date of their first meeting with Title IX Coordinator and scheduled hearing. The parties must provide subsequent timely notice to the Title IX Coordinator if they change advisors at any time. No audio or video recording of any kind other than as required by institutional procedure is permitted during meetings with University officials.

c. Grievance Process

The grievance process for incidents of sexual harassment under Title IX is as follows:

i. Written Notice

Upon receipt of a formal complaint, the University will provide a written notice of allegations to both parties, if

known, simultaneously. The notice includes the following information:

1. Notice of the allegation of sexual harassment, as defined in this policy, containing sufficient details known at the time, including:
 - a. Identities of the parties involved in the incident (if known);
 - b. Conduct allegedly constituting a policy violation;
 - c. Date and location of the alleged incident (if known).
2. Sufficient time for each party to prepare a response before any initial interview. Explanation of each party's right to an advisor of their choice, who may be, but is not required to be, an attorney. The advisor may participate during the grievance process, subject to limitations established by the University.
3. Explanation of each party's right to an advisor of their choice, who may be, but is not required to be, an attorney. The advisor may participate during the grievance process, subject to limitations established by the University.
4. Explanation of each party's right to inspect and review all evidence gathered during the investigation.
5. Reference to the sections of this policy and the University's Handbooks which prohibit knowingly making false statements or knowingly submitting false information during the grievance process.
6. Statement that the respondent is presumed not to be responsible for the alleged conduct unless and until a determination of responsibility is final.
7. Statement that a determination of responsibility will be made at the conclusion of the grievance process.
8. Provide a copy of the University Policy on Sexual Misconduct & Sexual Harassment, which outlines the grievance process utilized to address alleged incidents of sexual harassment under Title IX.
9. List of on-campus and off-campus support resources for complainants.

If, during the course of the investigation, Misericordia University decides to investigate allegations about the complainant or respondent that are not included in the initial notice provided to the parties, the University will provide written notice of the additional allegations to the parties whose identities are known.

ii. Investigation of Formal Complaints

The University is obligated to investigate formal complaints of sexual harassment. Generally, the University will complete the Title IX investigation within thirty (30) days. The University will inform the parties of the name and title of the assigned investigator in the written notices of investigative interview issued to the parties.

Role of Misericordia University & the Parties

During the investigation, the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the University and not on the parties.

Both parties are provided with an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence during the grievance process. The University will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.

Misericordia University is prohibited from accessing, considering, disclosing, or otherwise using a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized

professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the University obtains the party's voluntary, written consent to do so for the grievance process outlined in this policy.

Participation of the Parties in the Investigation Process

Misericordia University will provide written notice to a party who is invited and expected to participate in any investigative interviews, hearings, or other meetings. This written notice will include the date, time, location, names of participants, and purpose of the meeting 10 (ten) days prior to the meeting, providing the party with sufficient time to prepare.

Parties may not attend interviews of any other party or witness or any meeting or hearing related to the investigation, unless invited and expected to participate by the University.

Prior to completion of the investigative report at the conclusion of the investigation, all parties have the opportunity to have not more than one person present during any grievance proceeding which they attend, including the opportunity to be accompanied to any grievance-related meeting or proceeding by an advisor of their choice, who may be an attorney. A party may only be accompanied by their advisor during the live hearing. Misericordia University does not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding, including investigative interviews. However, the University reserves the right to establish restrictions regarding the extent to which the advisor may participate in the proceedings, which will apply equally to both parties.

All parties and their advisors will be given an equal opportunity to inspect and review all evidence gathered during the investigation that is directly related to the allegations raised in the formal complaint, including evidence upon which the University does not intend to rely in reaching a determination regarding responsibility as well as inculpatory and exculpatory evidence, regardless of the source. The evidence subject to inspection and review will be provided either in electronic format or hard copy to the parties and their advisors, if any. The parties will have ten (10) days to submit a written response regarding the investigation evidence. The investigator will consider the parties' responses prior to completion of the investigative report.

The University may redact confidential portions of the investigation file or require the parties and their advisors to execute nondisclosure agreements to preserve the confidentiality of confidential information prior to release of the investigation file to the parties and their advisors.

All of the evidence which was provided to the parties for inspection and review will be made available at any hearing related to the formal complaint to provide each party the equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

The parties may submit any additional evidence prior to the investigator finalizing the investigative report with a copy provided to the other party and their advisor.

Investigative Report

The Title IX investigator will create an investigative report that fairly summarizes relevant evidence.

Upon completion, the investigator will send the investigative report to each party and the party's advisor, if

any, at least ten (10) days prior to a scheduled hearing, in electronic format or hard copy. Upon review, the parties may submit a written response to the decision-maker not less than five (5) days prior to the scheduled hearing, with a copy to the other party and their advisor. The other party may submit a written reply to the written response at least two (2) days prior to the scheduled hearing with a copy to the other party and their advisor.

The investigator may include recommended findings or conclusions in the investigative report, but the decision-maker is under an independent obligation to objectively evaluate relevant evidence in making a determination.

d. Hearing Process

Live hearings are a mandatory part of the Title IX grievance process. A single hearing officer or panel of hearing officers will act as the decision-maker(s) at the University Title IX hearings and must not be the same person as the Title IX Coordinator, Title IX Deputy Coordinator, or investigator. Misericordia University will provide specific procedural rules for the live hearing to the parties and their advisors at least 10 (ten) days prior to the scheduled hearing.

Live hearings may be conducted with all parties physically present in the same geographic location. In this instance, at the request of either party, the University will arrange for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and the parties to simultaneously see and hear the party or witness answering the questions.

Misericordia University also reserves the right to require or permit any or all parties, witnesses and other participants to appear at the live hearing virtually, with technology enabling participants to simultaneously see and hear each other.

The University will create an audio recording, audiovisual recording, or transcript of any live hearing and make it available to the parties for inspection and review.

Both parties have the right to present relevant fact and expert witnesses as well as inculpatory and exculpatory evidence at the hearing. A written summary of any evidence not included in the investigation file should be provided to the decision-maker and the other party and their advisor no less than five (5) days prior to the hearing.

i. Cross-Examination

During the live hearing, the decision-maker will permit each party's advisor to ask the other party and any witnesses any relevant questions and follow-up questions, including questions which challenge credibility.

Cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor, and cross-examination may never be conducted by a party personally.

Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first 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: 1.) 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 2.) 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.

If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) may not rely on any statement of that party or witness in reaching a determination regarding responsibility. However, the decision-maker(s) may not draw an inference about the determination regarding responsibility based solely on a party's or witnesses' absence from a live hearing or refusal to answer cross-examination or other questions.

e. Hearings & Advisors

Apart from the advisor's role in cross-examination, the University reserves the right to restrict the extent to which advisors may participate in the proceedings.

If a party does not have an advisor present at the live hearing, Misericordia University will provide, without fee or charge to that party, an advisor of the University's choice to conduct cross-examination on behalf of that party. The advisor may be, but is not required to be, an attorney.

The University will include details regarding the role of the advisors in the hearing procedural rules provided to the parties at least 10 (ten) days prior to the scheduled hearing.

i. Determination Regarding Responsibility

Following the live hearing, the decision-maker(s) will issue a written determination. To reach the determination, the decision-maker(s) will apply the preponderance of evidence standard of evidence, as defined in this policy.

The decision-maker(s) will issue the written determination to the parties simultaneously generally no more than ten (10) days after the conclusion of the live hearing. Copies will be sent to the parties and their advisors by email, certified mail, or overnight delivery service such as Federal Express, with receipt of acknowledgement.

The written determination will include the following information:

1. Identification of the allegations potentially constituting sexual harassment, as defined in this policy;
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather evidence, and hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding the application of Misericordia University's Handbooks (Student, Staff or Faculty, as applicable) and/or this policy to the facts;
5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions to be imposed on the respondent, and whether remedies designed to restore or preserve equal access to the University education program or activity will be provided by the University to the complainant; and

6. The University's procedures and permissible bases for the complainant and respondent to appeal.

The determination is final either:

1. On the date the University provides the parties with the written determination of an appeal, if an appeal was filed; or
2. The date for filing an appeal expires without an appeal having been filed.

ii. Appeals

Either complainant or respondent may file a written notice of appeal of a determination of dismissal of a formal complaint within 5 (five) days after receiving the written determination or notice of dismissal. The notice of appeal must be delivered to the Title IX Coordinator or Title IX Deputy Coordinator within such 5 (five) day period by email, personal delivery, certified mail or overnight delivery service.

A party may appeal from a) determination regarding responsibility, and b) the University's dismissal of a formal complaint or any allegations therein, on the following bases:

- A. Procedural irregularity that affected the outcome of the process;
- B. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the process; and
- C. The Title IX Coordinator, investigator(s), or decision-maker(s) 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 process.

In the event that a party files an appeal, the appeal decision-maker(s) generally will be a Vice President of the University. The appeal decision-maker will be free of bias as well as conflict of interest and will not be the Title IX Coordinator, investigator involved in the investigation, or decision-maker who reached the determination regarding responsibility or dismissal. The appeal decision-maker will have received required training under Title IX.

Misericordia University will notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties, including a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.

The appealing party must submit a statement to the appeal decision-maker in support of the appeal within 5 (five) days of filing the notice of appeal with a copy to the other party and their advisor. Although the other party is not obligated to respond to the appealing party, should the other party wish to respond, the other party must submit a written response to the statement filed by the appealing party to the appeal decision-maker within 5 (five) days of receipt of the appealing party's statement with a copy to the other party and their advisor.

No oral arguments will be held on the appeal unless so directed by the appeal decision-maker, in which case both parties' advisors will be given an equal opportunity to present oral arguments.

The appeal decision-maker will issue a written decision simultaneously to both parties, describing the result and the rationale of the decision generally within ten (10) days of receiving the final written statements from the parties.

iii. Informal Resolutions

At any time following the filing of a formal complaint and prior to reaching a determination regarding responsibility, the University offers complainants and respondents informal resolution options such as

mediation, restorative justice, or other forms of alternative dispute resolution, which do not involve or require a full investigator and adjudication (hearing process).

In order for the University to proceed with informal resolution options, the University will:

- A. Provide the parties with a written notice disclosing the following:
 - i. The allegations;
 - ii. The requirements of the informal resolution process, including the circumstances under which the informal resolution process would preclude the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint; and
 - iii. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
- B. Obtain voluntary, written consent from the parties to the informal resolution process

The University will provide the parties with the specific guidelines corresponding to the various informal resolution options prior to the parties signing a written consent to the informal resolution process.

Misericordia University is prohibited from offering informal resolution options in cases which involve a University employee's sexual harassment of a student.

The University is prohibited from requiring as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment as outlined in this policy. Additionally, the University cannot require the parties to participate in an informal resolution process and cannot offer an informal resolution process unless a formal complaint has been filed.

iv. Recordkeeping

The University will maintain for a period of seven years the records regarding the following:

- A. Each sexual harassment investigation, including any determination regarding responsibility, the audio recording, audiovisual recording, or transcript of the hearing, any disciplinary sanctions imposed on the respondent, as well as any remedies provided to the complainant designed to restore or preserve equal access to the University's education program or activity;
- B. Any appeal and the result therefrom;
- C. Any informal resolution and the result therefrom; and
- D. All materials used to train Title IX Coordinators, investigators, decision-makers, and informal resolution facilitators. Misericordia University will make these training materials publicly available on its website.

For each response to a report or formal complaint of sexual harassment, the University will create and maintain for a period of seven years, records of any actions, including any supportive measures taken. In each instance, the University will document the basis for its conclusion that its response was not deliberately indifferent and document that it has taken measures designed to restore or preserve equal access to the University's education program or activity. If Misericordia University does not provide a complainant with supportive measures, then the University will document the reasons why such a response was not clearly

unreasonable in light of the circumstances.

Attachments

[2.1.2 How to Get Help if You Experienced Sexual Harassment or Misconduct](#)

Approval Signatures

| Step Description | Approver | Date |
|---------------------------------|---|---------|
| Final Approval | Kathleen Owens: President | 06/2021 |
| Reviewed By President's Cabinet | Mark Van Etten: Vice President, Finance and Administration | 05/2021 |
| | Pamela Parsnik: Director of Human Resources & Title IX Coord. | 05/2021 |