



## Mars Hill University Sex and Gender Harassment, Discrimination, and Misconduct Policy and Procedure

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## **I. Policy Statement and Scope**

Mars Hill University (MHU) is committed to sustaining a safe and healthy learning, living, and employment environment. Members of the MHU community, guests, and visitors have the right to be free from all forms of sex and gender-based harassment, discrimination, and related misconduct. The University prohibits all forms of sex and gender-based misconduct, including but not limited to sex and gender-based harassment, discrimination, sexual harassment, sexual violence, domestic violence, dating violence, and stalking. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others.

The University's Sex and Gender Harassment, Discrimination, and Misconduct Policy is not meant to inhibit or prohibit educational content or discussion inside or outside of the classroom that includes controversial or sensitive subject matters protected by academic freedom. Academic freedom extends to topics that are pedagogically appropriate and germane to the subject matter of courses or that touch on academic exploration of matters of public concern.

Mars Hill University is dedicated to promoting a culture that endeavors to prevent sex and gender-based harassment, discrimination, and misconduct. The University provides prompt reporting, fair and timely resolutions, and support for all individuals involved. We welcome your participation in nurturing a community that is free from sex and gender-based harassment, discrimination, and misconduct in all their forms.

## **II. Title IX Coordinator and Compliance**

Title IX is a federal civil rights law in the United States of America enacted as part of the Education Amendments of 1972. The U.S. Department of Education's Office for Civil Rights (OCR) enforces the Title IX statutes. Title IX applies to schools, local and state educational agencies, and other institutions that receive federal financial assistance from the Department. Title IX states:

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

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

Jennie Matthews, Title IX Coordinator  
Mars Hill University  
Nash Education Building Room 209  
Phone: (828) 689-1179  
Email: [jmatthews@mhu.edu](mailto:jmatthews@mhu.edu)

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

Office of Civil Right (ORC)  
US Dept. of Health and Human Services- Southeast Region  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8909

Customer Response Center (800) 368-1019  
Fax (202) 619-3818  
TDD (800) 537-7697  
Email: ocrmail@hhs.gov

In the event an incident involves alleged misconduct by the Title IX Coordinator, reports should be made directly to the Vice President of Student Life, Dr. Dave Rozeboom at [dave\\_rozeboom@mhu.edu](mailto:dave_rozeboom@mhu.edu)

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

The effective date of this Policy is August 14, 2020, which supersedes any previous policies addressing sexual misconduct, violence, discrimination, and harassment. This Policy applies to all sexual misconduct reported to have occurred on or after August 14, 2020. If the sexual misconduct reportedly occurred prior to August 14, 2020, then: (1) the report will be evaluated using definitions of misconduct contained in applicable University policies in effect on the date the reported sexual misconduct occurred; and (2) other aspects of the University's response to the report (e.g., grievance procedures) will be based on this Policy.

MHU reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect. During the Resolution Process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX

Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate, effective date identified) upon determining that changes to law or regulation require Policy or procedural alterations not reflected in this Policy and Procedures. If government laws or regulations change– or court decisions alter–the requirements in a way that impacts this document, this document will be construed to comply with the most recent government laws, regulations, or applicable law. This document does not create legally enforceable protections beyond the protections of the background state and federal laws which frame such policies and codes, generally. In addition, the procedures set forth in this Policy reflect the MHU’s goal to respond to formal complaints in good faith and in compliance with legal requirements. MHU recognizes that each case is unique. Circumstances may arise which require that MHU reserve some flexibility in responding to them, and, therefore, MHU reserves the right to modify these procedures or to take other administrative action it deems appropriate in the circumstances.

### **III. Applicable Laws**

Mars Hill University complies with the requirements outlined by Title IX of the Education Amendments of 1972 (“Title IX”), Violence Against Women Reauthorization Act of 2013 (VAWA), Title VII of the Civil Rights Act of 1964 (“Title VII”), the Jeanne Clery Disclosures of Campus Security Policy and Campus Crime Statistics Act (“Clery Act/Campus SaVE Act”), and all other applicable laws regarding unlawful sex-based violence, discrimination, harassment or other misconduct.

Consistent with these federal laws, Mars Hill University prohibits discrimination on the basis of sex, sexual orientation, gender, gender-related identity and expression, pregnancy, and parental status in any University program or activity. “Sexual misconduct,” including sexual harassment, sexual assault, and sexual exploitation, is a form of sex discrimination and is prohibited by this Policy. “Interpersonal violence,” including domestic violence, dating violence, and stalking, is also prohibited by this Policy. Individuals found to have engaged in prohibited sex-based misconduct will be subject to disciplinary action, up to and including termination and/or expulsion from the University.

### **IV. Individuals Covered**

This policy applies to the conduct of and protects:

- Students of Mars Hill University
- Employees and affiliates of the University; and
- University contractors and third parties participating or attempting to participate in the University’s operations or education.

The Department of Education also requires the protection of individuals based on parental and marital status. Title IX specifically prohibits discrimination against an individual based on pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from any of these conditions. The Department of Education also prohibits the University from applying any rule related to a student’s parental, family, or marital status that treats students differently based on their sex.

- Under Title IX, it is illegal to exclude a pregnant student from participating in any part of an educational program. This prohibition applies to specific classes such as advanced placement or honors classes, extracurricular programs, interscholastic

sports, honor societies, and opportunities for student leadership, among other activities.

- In addition, the University must excuse a student's absences because of pregnancy or childbirth for as long as the student's doctor deems the absences medically necessary. When a student returns to school, they must be allowed to return to the same academic and extracurricular status as before their medical leave began.

This Policy applies regardless of the Reporting Individual or the Respondent's sex, sexual orientation, gender identity, or gender expression. Sexual misconduct can occur between individuals regardless of their relationship status and can occur between people of the same or of different sexes, sexual orientation, gender identities, or gender expressions.

- The "**Complainant**" refers to an individual who is alleged to be the victim of conduct that could constitute sexual misconduct, regardless of whether that person makes a report or seeks actions under this Policy.
- The "**Respondent**" refers to an individual who had been reported to be the perpetrator of conduct that could constitute sexual misconduct.

*Note: The above terms do not imply pre-judgment concerning whether sexual misconduct occurred.*

## V. **Jurisdiction**

With respect to employees and other non-students, this Policy applies to conduct which:

1. occurs on University-controlled property;
2. occurs in the context of a University education program or activity including University employment; and/or
3. occurs outside the context of a University education program or activity, but has continuing adverse effects or creates a sexually hostile environment on University-controlled property or in any University education program or activity, including University employment.

Each student is responsible for their conduct from the time of application for admission through the actual awarding of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. The Policy applies to a student's conduct even if the student withdraws from school while a disciplinary matter is pending. The Dean of Students will decide whether student code of conduct will be applied to conduct occurring off campus, on a case-by-case basis, in their sole discretion. The University may address Sexual misconduct that occurs off-campus regardless of whether the University has a duty under Title IX to address the conduct.

## VI. **NCAA Institutional Disclosure**

As a member of the National Collegiate Athletic Association (NCAA), Mars Hill University (MHU) adheres to the NCAA Board of Governors Policy on Campus Sexual Violence and gathers certain disciplinary and criminal history about current, potential incoming and transfer student-athletes from their former institutions. Student athletes who wish to participate in NCAA intercollegiate athletics must comply with this procedure.

In keeping with the NCAA Board of Governors Policy on Campus Sexual Violence, Mars Hill University will require all incoming, continuing, and transfer student-athletes to complete an annual Institutional Disclosure Form related to their conduct that resulted in discipline through a Title IX proceeding or in a criminal conviction for sexual, interpersonal or other acts of violence. Transfer student-athletes also must disclose whether a Title IX proceeding was incomplete at the time of transfer. Failure to make a full and accurate disclosure could result in penalties, including loss of eligibility to participate in athletics as determined by Mars Hill University.

In recruiting an incoming student-athlete or accepting a transfer student-athlete, the University will gather information that reasonably yields information from the former institution(s) to put the recruiting institutional leadership on notice as to whether the student left an institution with an incomplete Title IX proceeding, was disciplined through a Title IX proceeding, or has a criminal conviction for sexual, interpersonal or other acts of violence.

## VII. Key Definitions

1. The “**Complainant**” refers to an individual who is alleged to be the victim of conduct that could constitute sexual misconduct, regardless of whether that person makes a report or seeks actions under this Policy.
2. **Confidential Resource:** an individual who is employed or contracted by the University to provide emergency and ongoing support to students. Confidential Resources may include persons employed by a community-based sexual assault crisis center with whom the University partners. Individuals designated as “Responsible Employees” in Section VI of these Procedures are not Confidential Resources. To learn more about the role of a Confidential Resource see section VIII-Reporting, subsection C, on page 12 of this Policy.
3. **Consent:** knowing and voluntary agreement to engage in sexual activity. Coercion, force, or the threat of either invalidates consent. Consent may not be inferred from silence, passivity, or a lack of verbal or physical resistance. A person’s manner of dress does not constitute consent. Past consent to sexual activities does not imply ongoing or future consent. Consent to engage in sexual activity with one person does not constitute consent to engage in sexual activity with another person. Consent may be withdrawn at any time. A person cannot consent to sexual activity if that person is unable to understand the nature of the activity or give knowing consent due to circumstances, including, without limitation, the following:
  - the person is incapacitated due to the use or influence of alcohol or drugs;
  - the person is asleep or unconscious;
  - the person is under age; or
  - the person is incapacitated due to a mental disability.
4. **Coercion:** to force a person to act based on fear of harm to self or others. Means of coercion may include but are not limited to, pressure, threats, emotional intimidation or the use of physical force.

5. **Dating Violence:** (as defined by the VAWA) violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.
6. **Domestic Violence:** (as defined by the VAWA) A felony or misdemeanor crime 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 in which the crime of violence occurred; 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 in which the crime of violence occurred
7. **Education Program or Activity:** refers to all the operations of the University, including, but not limited to, in-person and online educational instruction, employment, research activities, extracurricular activities, athletics, performances, and community engagement and outreach programs. The term applies to all activity that occurs on campus or other property owned or occupied by the University. It also includes off-campus locations, events, or circumstances over which the University exercises substantial control over the Respondent and the context in which the Title IX Sexual Harassment occurring in any building owned or controlled by a student organization that is officially recognized by the University.
8. **Hate Crime:** an act or an attempted act that violates a criminal statute by any person that in any way constitutes an expression of hostility toward the victim because of his or her sex, race, ethnicity, religion, age, disability, national origin, sexual orientation, or gender-related identity, color, marital status, military status or unfavorable military discharge.
9. **Hostile Environment Sexual Harassment:** is unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person access to the University's Education Programs or Activities.

In determining whether a hostile environment exists, the University will consider the totality of circumstances, including factors such as the actual impact the conduct has had on the Complainant, the nature and severity of the conduct at issue, the frequency and duration of the conduct; the relationship between the parties (including accounting for whether one individual has power or authority over the other); the respective ages of the parties; the context in which the conduct occurred; and the number of persons affected. The University will evaluate the totality of circumstances from the perspective of a reasonable person in the Complainant's position. A person's adverse subjective reaction to conduct is not sufficient, in and of itself, to establish the existence of a hostile environment.

Some specific examples of conduct that may constitute Sexual Harassment if unwelcome include, but are not limited to:

- Unreasonable pressure for a dating, romantic, or intimate relationship or sexual contact
- Unwelcome kissing, hugging, or massaging
- Sexual innuendos, jokes, or humor
- Displaying sexual graffiti, pictures, videos, or posters
- Using sexually explicit profanity
- Asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities
- E-mail, internet, or other electronic use that violates this policy
- Leering or staring at someone in a sexual way, such as staring at a person's breasts or groin
- Sending sexually explicit emails, text messages, or social media posts
- Commenting on a person's dress in a sexual manner
- Giving unwelcome personal gifts such as lingerie that suggest the desire for a romantic relationship
- Insulting, demeaning, or degrading another person based on gender or gender stereotypes

10. **Incapacitation:** when a person is incapable of giving consent due to the person's age, use of drugs or alcohol, or because of an intellectual or other disability that prevents the person from having the capacity to give consent. Where alcohol or other drugs are involved, one does not have to be intoxicated or drunk to be considered incapacitated. The impact of alcohol and drugs varies from person to person, and evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs impacts an individual's: decision-making capacity, awareness of consequences, and ability to make informed judgments, or capacity to appreciate the nature of the act. Whether a Respondent reasonably should have known that a Complainant was incapacitated will be evaluated using an objective reasonable person standard. The question is whether the Respondent knew or a sober, reasonable person in the position of the Respondent knew or should have known that the Complainant was incapacitated. Because incapacitation may be difficult to discern, individuals are strongly encouraged to err on the side of caution, i.e., when in doubt, assume that another person is incapacitated and, therefore, unable to give consent.

*Note: Being intoxicated by drugs or alcohol is no defense to any violation of this Policy and does not diminish one's responsibility to obtain consent.*

11. **Interpersonal Violence:** sexual violence, domestic violence, dating violence or stalking under the Preventing Sexual Violence in Higher Education Act.

12. **Preponderance of the Evidence:** (also known as "more likely than not") is used by the University as a standard for proof of whether a violation occurred. In campus resolution proceedings, legal terms like "guilt" or "innocence" are not applicable. Campus resolution proceedings are conducted in order to consider the totality of all evidence available from all relevant sources. It is the goal of the University to investigate all



complaints in a prompt and equitable manner. In so doing, the University will not assume a party is in violation of University policy prior to a hearing determination.

13. **Quid Pro Quo Sexual Harassment:** is an employee of the University conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct.
  - Example (including but not limited to): A professor or coach requesting sexual conduct for a particular grade or position on a team.
14. **Respondent** refers to an individual who had been reported to be the perpetrator of conduct that could constitute sexual misconduct.
15. **Responsible Employees:** All University employees (faculty, staff, administration, and student employees-such as RAs) who are not designated as Confidential Advisors are individuals who are expected to immediately report actual or suspected discrimination or harassment to appropriate officials.
16. **Responsible Person:** a person under similar circumstances as and with similar identities.
17. **Retaliation:** direct or indirect intimidation, threats, coercion, and/or discrimination that arises against an individual who exercises their rights under Title IX in order to interfere with any right or privilege secured by Title IX. This extends to any individual(s) involved in a Title IX report, who make a formal/informal report, who assist in investigations, or who are involved in conduct sanctions.
  - Retaliation does not include (1) the exercise of rights protected under the First Amendment; (2) charging an individual with making a materially false statement in bad faith in the course of a grievance proceeding (provided, however, that a determination regarding responsibility alone is not sufficient to conclude that an individual made a materially false statement in bad faith); or (3) good faith actions lawfully pursued in response to a report of prohibited conduct.
18. **Sex-Based Misconduct:** Misconduct on the basis of sex, sexual orientation or gender-related identity. Such misconduct includes sex discrimination, sexual harassment, sexual assault, sexual exploitation, dating violence, domestic violence, sexual violence, and stalking.
19. **Sexual Assault (Sex Offense):** (as defined by the Clery/Campus SaVE Act) a sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.
  - **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or mental or physical incapacity.
  - **Incest:** non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

- **Rape:** The penetration, no matter how slight, of the vagina or anus with any body part or object or oral penetration by a sex organ of another person, without the consent of the victim.
- **Sexual Assault with an Object:** use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- **Sodomy:** oral or anal sexual intercourse with another person, forcibly and/or against that person's will; or not forcibly or against that person's will where the victim is incapable of giving consent because of age because of temporary or permanent mental or physical incapacity.
- **Statutory Rape:** non-forcible sexual intercourse with a person who is under the statutory age of consent (16 years in North Carolina). For incidents that occur outside of the U.S. (e.g., study abroad programs), North Carolina law will apply in determining a violation of this Policy.

20. **Sexual Harassment:** (as defined by the Office of Civil Rights) refers to sex-based conduct that satisfies one or more of the following:

- (1) *quid pro quo* harassment by an employee of an educational institution—meaning that an employee offers something to a student or other person in exchange for sexual conduct;
- (2) unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an education program or activity; or
- (3) sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking (as defined in the Violence Against Women Act).

21. **Sexual Exploitation:** when a person takes non-consensual or abusive sexual advantage of another for anyone's advantage or benefit other than the person being exploited, and that behavior does not meet the definition of sexual assault. Sexual exploitation includes prostituting another person, non-consensual visual or audio recording of sexual activity, non-consensual distribution of photos or other images of an individual's sexual activity or intimate body parts with an intent to embarrass such individual, non-consensual voyeurism, knowingly transmitting HIV or a sexually transmitted disease to another, or exposing one's genitals to another in non-consensual circumstances.

22. **Sexual Violence:** physical, sexual acts attempted or perpetrated against a person's will or where a person is incapable of giving consent (e.g., due to the person's age, use of drugs or alcohol, or because an intellectual or other disability prevents the person from having the capacity to give consent). Sexual violence includes but is not limited to rape, sexual assault, sexual battery, sexual abuse and sexual coercion. All such acts of sexual violence are forms of sex discrimination prohibited by Title IX.

23. **Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person’s safety or the safety of others or suffer substantial emotional distress.

- A “course of conduct” means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.
- “Substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily require, medical or other professional treatment or counseling.

*Note: All court-ordered “Stalking/No Contact Orders” should be placed on file with Campus Security. Please direct all court-ordered documents to Wren Student Union, Student Development Suite 317A. The department is open 24hrs a day, 7 days a week, 365 days per year to provide security to the university community.*

- Phone: 828-689-1230
- On-Duty Officer: 828-206-1230
- Email: [security@mhu.edu](mailto:security@mhu.edu)

24. **Threat:** any oral or written expression or gesture that could be interpreted by a reasonable person as conveying an intent to cause harm to persons or property.

## VIII. Reporting

Any person (even when the person reporting is not the individual directly impacted by the alleged conduct) may make a Report at any time, including during non-business hours, regarding Title IX Sexual Harassment.

### A. Reporting Options

There are multiple options for making a Report. Anyone can file a Report by contacting the Title IX Office directly or by submitting an anonymous report via the [Title IX website](#). Options for directly reporting to the Title IX Office include:

1. In person by speaking to the Title IX Coordinator or Deputy Title IX Coordinator
  - Jennie Matthews, Title IX Coordinator  
Nash Education Building Room 209  
Phone: (828) 689-1197  
Email: [jmatthews@mhu.edu](mailto:jmatthews@mhu.edu)

By delivering, mailing, or otherwise transmitting the Report to the Title IX Office;

2. By calling the Title IX Office at (828) 689-1197, (828) 689-1712;

3. By emailing the Report to [jmatthews@mhu.edu](mailto:jmatthews@mhu.edu)
4. By completing a Report online: [Make A Report](#)
5. Through any other means that result in the Title IX Coordinator receiving the person's verbal or written Report.

Upon receiving a Report containing allegations of Title IX Sexual Harassment, the Title IX Coordinator will promptly contact the Complainant to discuss the availability of Supportive Measures (whether or not a Formal Complaint is filed), consider the Complainant's wishes with respect to Supportive Measures, and explain the Title IX Complaint Resolution Process, including the option to file a Formal Complaint.

#### B. Responsible Employees

All University employees (faculty, staff, administration, and student employees-such as RAs) who are not designated as Confidential Advisors are expected to immediately report actual or suspected discrimination or harassment to appropriate officials.

#### C. Confidentiality/Confidential Resources:

The Family Educational Rights and Privacy Act (FERPA) limits the disclosure of personally identifiable information derived from education records. In the course of investigating alleged policy violations, to the extent possible, Mars Hill University will make every reasonable effort to maintain confidentiality and privacy for all parties involved and expects all parties involved in any aspect of an investigation of a Title IX Report to also maintain confidentiality throughout the process.

All University employees are expected to immediately report actual or suspected discrimination or harassment to appropriate officials, though there are some limited exceptions. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. The University has identified select individuals/offices as Confidential Resources. Confidential Resources are trained professionals who can provide confidential support. These individuals are not required by the University to report any information to the Title IX Coordinator without your permission, though they may have certain reporting requirements pursuant to their own professional licensure requirements or code of ethics. The University's confidential reporting sources are:

- Counseling Center: 828-689-1196, [counseling@mhu.edu](mailto:counseling@mhu.edu)
- Center for Religious & Spiritual Life: 828-689-1299, [smcleskey@mhu.edu](mailto:smcleskey@mhu.edu)
- Student Health Center: 828-689-1383, [renee\\_sprinkle@mhu.edu](mailto:renee_sprinkle@mhu.edu)

*Note: While the above-listed counselors and advocates may maintain a reporting person's confidentiality vis-à-vis the University, they may have reporting or other obligations under State law.*

#### D. Right to an Advisor/Support Person

In compliance with federal law, the MHU Policy on Sex/Gender Harassment, Discrimination, and Misconduct affords Complainants and Respondents involved in the Mars Hill University investigative process the right to an Advisor of their choice.

The term Advisor refers to any individual selected by a Complainant or Respondent to provide advice and/or support for that individual during a sex or gender-based discrimination, violence, or harassment investigation, informal resolution, or formal hearing process. In the event of a formal hearing, the Advisor will also be responsible for conducting cross-examination on behalf of their advisee.

The Complainant and the Respondent also have the right to be assisted by a support person during all stages of a disciplinary proceeding, including all meetings, investigative interviews, and hearings. A support person may be a friend, a family member, or any individual who is not otherwise a potential witness in the Sexual misconduct investigation. The support person is not permitted to speak for or on behalf of a Complainant or Respondent, appear in lieu of a Complainant or Respondent, participate as a witness, or participate directly in any other manner during any phase of the student conduct process.

#### E. Supportive Measures

During the Preliminary Investigative process, the Title IX Coordinator, in consultation with senior administrators, may implement Supportive Measures to ensure the safety of all members of the University community. By way of example, Supportive Measures could include no-contact orders, changes in housing assignments, changes to course schedules, changes to work schedules or duties, counseling, health services, other support services, or temporary suspension. If Supportive Measures are implemented, the Title IX Coordinator or a senior administrator shall notify the Complainant, the Respondent, and any other individual or entity affected by the Supportive Measures, in writing. The following factors are considered when determining the appropriateness of Supportive Measures: the seriousness of the allegations, scheduled interactions between the Grievant and the Respondent (e.g., courses, housing assignments, extracurricular activities), restraining orders or other civil protections. When implementing Supportive Measures, the Title IX Coordinator will balance the need to ensure the safety of the Complainant and the University community with the need to minimize the impact on the Respondent.

#### F. Formal Complaints

A Complainant has the option to file a Formal Complaint alleging Title IX Sexual Harassment by a Respondent and request that The University investigate those allegations. A Formal Complaint must be filed before an Investigation or Informal Resolution under these Procedures can commence. In rare instances, the Title IX Coordinator may also decide to file a Formal Complaint of Title IX Sexual Harassment where the Complainant chooses not to do so if

- the allegations included the use of a weapon;
- the alleged Respondent exhibited a pattern of the alleged behavior;
- the allegations would have a negative impact on campus safety/security; or
- if the allegation involved a university employee and student.

When a Formal Complaint of Title IX Sexual Harassment is received by the Title IX Office, the Title IX Coordinator will evaluate the allegations in the Formal Complaint to determine whether the following conditions are satisfied:

- The conduct is alleged to have been perpetrated against a person in the United States;
- The conduct is alleged to have taken place within The University's programs and activities; and
- At the time of the filing or signing of the Formal Complaint, the Complainant is participating in or attempting to participate in the University's programs or activities.

If it is determined that all of the above conditions are satisfied, The University will address the Formal Complaint of Title IX Sexual Harassment by beginning a formal investigation. Once the Title IX Coordinator signs a Formal Complaint of Title IX Sexual Harassment within the scope of these Procedures, a written notice of the allegations will be sent to both parties in line with the following procedures:

- Notice that the Formal processes comply with the requirements of Title IX;
- Notice of the allegations potentially constituting Title IX Sexual Harassment, providing sufficient detail for a response to be prepared before any initial interview, including (1) identities of the parties, if known; (2) the conduct allegedly constituting Title IX Sexual Harassment; and (3) the date and location of the alleged conduct;
- A statement that the Respondent is presumed not responsible for the alleged Title IX Sexual Harassment until a determination regarding responsibility is made at the conclusion of the grievance process;
- Notice that each party may have an advisor of their choice who may be, but is not required to be, an attorney and who, along with the party, may inspect and review evidence directly to the allegations that is gathered in the investigation;
- Information regarding the availability of support and assistance through The University resources and the opportunity to meet with the Title IX Coordinator (or their designee) in person to discuss resources, rights, and options;
- Notice of The University's prohibition of Retaliation against the Complainant, the Respondent, and witnesses; that The University will respond promptly when Retaliation is reported; and how to report acts of Retaliation; and
- Notice that The University prohibits knowingly making false statements and knowingly submitting false information during the grievance process.

The Title IX Coordinator may consolidate formal complaints as to allegations against more than one Respondent, or by more than one Complainant against one or more respondents, or by one party against the other party, where the allegations of sexual misconduct arise out of the same facts or circumstances.

#### G. False Reports

Mars Hill University will not tolerate intentional false reporting of incidents. It is a violation of the *Student Code of Conduct* to make an intentionally false report of any

policy violation, and it may also violate state criminal statutes and civil defamation laws.

## **IX. Investigations and Hearings**

### **A. Process**

In all investigations of alleged Title IX Policy violations, the University must ensure that the burden of proof of gathering evidence rests on the University and not on the parties. The University will provide an equal opportunity for the parties to identify and present witnesses for interview, including fact witnesses and expert witnesses, and other inculpatory and exculpatory evidence. The University will provide written notice of the date, time, location, participants, and purpose of all investigative interviews and other meetings, with sufficient time to prepare to participate. Prior to preparing an investigative report, the University will provide both parties with an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint. At the end of the investigation, the University will prepare an investigative report.

Upon completion of the investigative process, a live Title IX hearing, including the opportunity for cross-examination of all witnesses by each party's advisor, must occur in order to separate the investigative function from the decision-making function. MHU will provide appropriate evidentiary and technology training for adjudicators (chosen by the University). The hearings will be conducted live, virtually (via Zoom), and recorded. The scope of cross-examination and questioning requires decision-maker(s) to determine whether a question is relevant before the party or witness is required to answer. The decision-maker(s) must then explain on the record the basis for excluding a question as not relevant. Some rape shield protections for complainants apply, as questions and evidence about a complainant's sexual predisposition or prior sexual behavior are deemed not relevant by default. MHU will provide an advisor to conduct the cross-examination, free of charge, to a party if she or he does not have one present at the live hearing. Upon conclusion of the hearing, a letter of determination will be sent to both parties.

### **B. Timelines**

It is the goal of the University to investigate all complaints in a prompt and equitable manner. Accordingly, the University strives to complete and resolve a filed complaint within 65 business days or less (exclusive of any appeal). After the initial investigation is completed, both parties will be sent a copy of the initial investigative report, each party has the opportunity to review the report and provide feedback and additional requests for investigation or evidence for review within 5 business days of receiving the initial report. Following any additional investigation necessary, a Final Investigative Report will be issued to both parties, both parties will have the opportunity to provide comments to the report within 5 business days of receiving the Final Report. The Final Report and any comments will be sent to all parties and a hearing will be scheduled. The hearing will be scheduled no earlier than 10 calendar days following the release of the Final Investigative Report. After a Formal Hearing concludes a written letter of determination will be sent via email and certified mail

simultaneously to both parties within 5 business days. All parties have 5 business days to submit appeals to the Title IX Coordinator.

## **X. Resolutions**

### **A. Informal Resolutions**

Informal resolution provides Complainants and Respondents with a voluntary, structured environment in which to resolve allegations of sexual misconduct following the filing of a Formal Complaint. The process is intended to be flexible while also providing for a full range of possible outcomes. Prior to an investigation, and at any time during the investigative process, the Title IX Coordinator may inquire of the parties if they wish to participate in informal resolution of the complaint. If, and only if, both the Complainant and the Respondent voluntarily agree to do so and complete the “Informal Resolution Request,” the Title IX Coordinator or designee(s) will meet with the parties and informally attempt to resolve the complaint. If the parties can reach an agreement, it shall be recorded in writing and signed by both the Complainant and Respondent, and no further action will be taken in connection with these Investigative Procedures. Once the Informal Resolution process has begun, either party may withdraw from the process at any point prior to signing the resolution agreement and re-enter the formal investigative process. However, once the Informal Resolution has been finalized, the terms of the agreement are binding and are not subject to appeal or a Formal Investigative Process. Failure to comply with the established terms of a finalized Informal Resolution may be referred to the appropriate University process for review and possible sanctions.

### **B. Dismissal of Complaints**

If a Complainant files a Title IX Sexual misconduct Complaint, the University must investigate the allegations. Under federal law, the University must dismiss a Title IX complaint if the conduct alleged in the Title IX Complaint (1) would not be Sexual Harassment, even if proven; (2) did not occur in the University’s “education program or activity;” or (3) did not occur within the United States.

Pursuant to the Mars Hill University Title IX Policy on Sex/Gender Harassment, Discrimination, and Misconduct, the University is permitted, but not required, to dismiss a Formal Complaint of Sexual Harassment if at any time during either the investigation or determination of responsibility stage(s):

- A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; OR
- The Respondent is no longer enrolled or employed by the University; OR
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.



Statement of Ongoing University Obligations

Please note that the dismissal of a Formal Complaint under Title IX does not preclude the University from continuing any investigation or acting under other University policies, code of conduct, or administrative rules/regulations. In some cases, the University may have an obligation to initiate or continue an investigation or proceeding under a different policy or mandated process. Should the University determine any separate obligation to proceed or initiate an investigation applies in this case, you will be informed of that fact in a separate announcement letter.

Statement of Appeal Rights

Either party may appeal a dismissal of a Formal Complaint of Sexual Harassment. The University Title IX Policy on Sex/Gender Harassment, Discrimination, and Misconduct provides that a dismissal of a Formal Complaint may be appealed on ANY one of the following bases:

- A procedural irregularity affected the outcome of the matter; OR
- The availability of new evidence - that was not reasonably available at the time the determination regarding dismissal was made - that could affect the outcome of the matter; OR
- The Title IX Coordinator, Investigator(s), or Decision-Maker(s) had a conflict of interest or bias for or against the individual complainant or respondent that affected the outcome of the matter.

C. Sanctions

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

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

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

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

- Warning – Written or Verbal
- Performance Improvement Plan
- Required Counseling

- Required Training or Education
- Demotion
- Suspension without Pay
- Suspension with Pay
- Termination

### **Sanctioning for Sexual Misconduct**

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

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

## **XI. Appeals**

### **A. Right of Appeal**

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

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

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

#### B. Appointment of Appellate Officer

Should an Appeal be filed in a timely manner and based on appropriate grounds, the Title IX Coordinator will appoint a single Appellate Officer to hear the Appeal within 5 business days. The Appellate Officer will be an individual who has experience serving in a Title IX formal investigative capacity. Neither Investigators or members of the Hearing Panel assigned to the case may serve as an Appellate Officer for the same case. The Title IX Coordinator will communicate with the Complainant and the Respondent the assigned Appellate Officer.

#### C. Appellate Officer Procedures and Report

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

Within 10 business days of being appointed, the Appellate Officer will produce a report as to whether the Appeal has merit. The Title IX Coordinator will share this report with the Complainant and the Respondent. If the Appellate Officer finds that an appeal based on new information has merit, the Title IX Coordinator will instruct the Investigators to review the new information, examine material evidence, or conduct new interviews as appropriate, and produce a Revised Investigation Report. If the Appellate Officer finds that an appeal based on a procedural error has merit, the Title IX Coordinator will appoint new Investigators to conduct a new investigation. If the Appellate Officer finds that an appeal based on a disproportionate recommendation has merit, the Appellate Officer will make a new recommendation.

## **XII. Record Retention**

The Department of Education requires institutions to adhere to certain recordkeeping requirements. These requirements include maintaining for seven years, records of:

- any sexual harassment investigation, including any responsibility determination and any required recording or transcript, as well as any sanctions imposed on the Respondent and any remedies provided to the complainant;
- Any appeal and its result;
- Any informal resolution and its results; and

- All materials used to train investigators, adjudicators, and Title IX coordinators with regard to sexual harassment.

Institutions are also required to make these training materials available on their website or upon request for inspection by members of the public. The institution must also create and maintain for a period of seven years any actions, including supportive measures, taken in response to a report or formal complaint of Sexual Harassment, as well as document the bases for its conclusions and that it has taken measures designed to preserve access to the institution's educational program or activity.

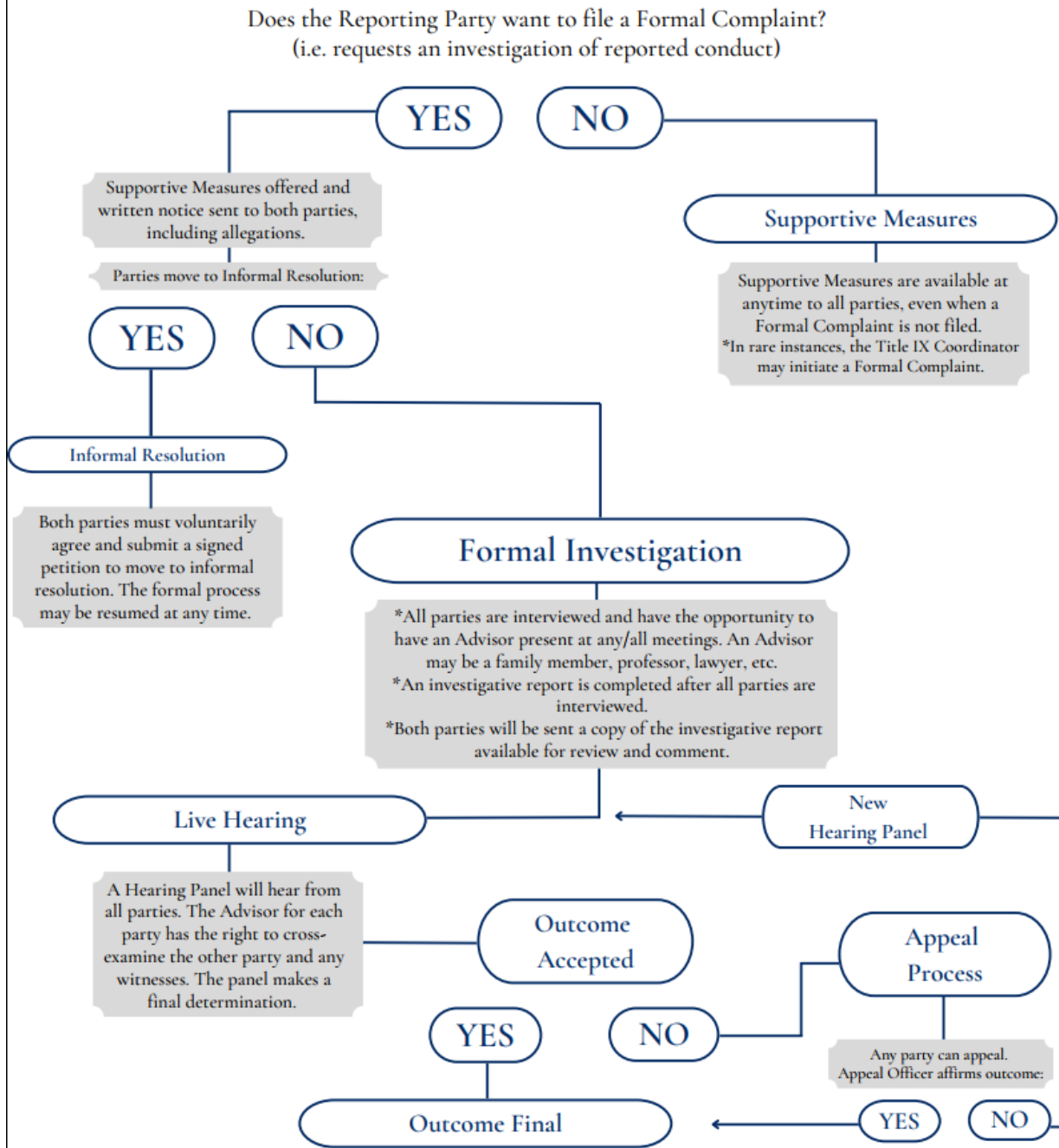
All files and supporting documents pertaining to Title IX violations (i.e. notification letters, interview notes, investigative reports, evidence such as texts, photos, emails, etc., final determination letters, and appeal information) will be uploaded into the PIVOT system database. Naturally, during the course of an investigation, paper files may be needed to provide ease of conducting interviews, but the paper file will be uploaded to PIVOT, and the paper records shredded at the end of the investigation.

**XIII. Appendix A**

**A flow chart for allegations of misconduct under the Title IX Policy:  
Sex and Gender Harassment, Discrimination, and Misconduct**

Supportive Measures are always available to both parties throughout and following the process.

This flow chart is designed to assist in providing an overview of the Procedures outlined in the Title IX Policy. Please reach out to the Title IX Coordinator for additional assistance in navigating this process.



Please contact the Title IX Office with any questions about this chart/process: [mary\\_grimm@mhu.edu](mailto:mary_grimm@mhu.edu)