

MSMU Student Title IX Policy

I. Introduction

Mount Saint Mary's University, Los Angeles ("MSMU") is committed to providing a learning, working, and living environment free of discrimination on the basis of sex. MSMU recognizes the significant, unacceptable and nationwide existence of Sexual Harassment on college campuses. The University does not condone and will not tolerate sexual harassment from any member of the University community, and is committed to taking all appropriate steps to eliminate sexual harassment, prevent its recurrence, and address its effects. Each member of the University community is responsible for conducting themselves in accordance with this Policy. The University also encourages all members of the University community to participate in the process of creating a safe, welcoming and respectful campus environment free from sexual harassment for all. Accordingly, MSMU encourages Students and University Community members to report instances of Sexual Harassment so that the University can take appropriate responsive action.

Title IX of the Education Amendments of 1972, and the regulations regarding Title IX released by the Department of Education in May of 2020 ("Title IX 2020 Regulations" or "Title IX") is a federal civil rights law that prohibits discrimination on the basis of sex in education programs and activities. Under the Title IX 2020 Regulations, discrimination on the basis of sex includes unwelcome conduct of a sexual nature that is severe, pervasive and objectionably offensive to the extent of denying an individual equal access to education, as well as student-on-student and student on faculty or staff Sexual Assault, Dating Violence, Domestic Violence and Stalking.

In instances where sexual misconduct occurs that does not meet the definition of Sexual Harassment under the Title IX 2020 Regulations, the incident may be adjudicated under MSMU's Student-on-Student Sexual and Interpersonal Misconduct Policy ("SIM Policy"). More information about the hearing process under the SIM Policy can also be found in MSMU's Student Conduct Code.

The Division of Student Affairs has created this Title IX Policy pursuant to the Title IX 2020 Regulations to assist and respond to complaints of Student Sexual Harassment under Title IX. Students should report all forms of Sexual Harassment and Sexual Assault (student-on-student; Student and non-student; faculty/staff-on-student), as well as Dating Violence, Domestic Violence and Stalking by filing a report with the MSMU Department of Campus Security, the Title IX Coordinator, or an administrator, regardless of whether the Student believes the misconduct meets the definition of Sexual Harassment under Title IX.

If you have any questions regarding Title IX or reporting sexual or interpersonal misconduct, please contact MSMU's Interim Title IX Coordinator, Megan Staudenraus, who can be reached at TitleIX@msmu.edu or 213.477.2803.

II. Definitions

- A. For the purpose of Reports and Formal Complaints filed under Title IX, a **Complainant** is the individual who is alleged to be the victim of conduct that may constitute Title IX Sexual Harassment.

- B. For the purpose of this policy, **Consent** is defined as the unambiguous and willing participation or cooperation in act, behavior or attitude that is commonly understood to be consistent with the exercise of free will. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative Consent of the other(s) to engage in the sexual activity. Consent requires participants who are lawful adults, fully conscious, equally free and legally competent to act, have clearly communicated their willingness, cooperation or permission to participate in the specific sexual activity engaged in, are positive and clear about

their desires and are able to cease ongoing consensual activity at any time.

Refusal to Consent does not have to be verbal; it can be expressed with clear gestures, body language or attitude. Lack of protest or resistance does not mean Consent, nor does silence mean Consent. Prior sexual history between the Complainant and Respondent, by itself, does not constitute continuing Consent nor Consent to new or additional sexual activity, nor does consenting to sexual activity with one person imply Consent to sexual activity with another person.

1. Consent is not freely given if:

- a. It is obtained through the use of force, through the fear of or the threat of force, through the abuse of a power position over another (such as employment status or position within an organization) or by kidnap; or
- b. A reasonable person, in the position of the alleged perpetrator at the time the alleged conduct occurred, should have known that the other person was unable to give Consent for any of the following reasons:
 - i. The individual is unable to make an informed decision as a result of the use of alcohol, drugs or other substances (including, but not limited to, predatory drugs or prescribed medications); or
 - ii. The individual is unable to consciously respond for whatever reason including lack of consciousness, sleep, illness or shock; or
 - iii. The individual is under the age of 18 and therefore legally incapable of giving Consent; or
 - iv. The individual is known by reason of impairment, mental condition or developmental or physical disability to be reasonably unable to Consent.
- c. The individual has acted or spoken in a manner that expresses a lack of Consent or a refusal to Consent.

2. The following are invalid excuses for failing to obtain affirmative Consent from the Complainant:

- a. The Respondent's belief in affirmative Consent arose from the intoxication or recklessness of the Respondent; or
- b. The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively consented.

C. For the purpose of this policy, **Dating Violence** is defined as violence committed by a person:

- 1. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- 2. 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.

D. For the purpose of this policy, **Domestic Violence** is defined as 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 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.

E. For the purpose of Formal Complaints filed under Title IX, **Education Program or Activity** is defined as locations, events or circumstances over which MSMU has substantial control over both the Respondent and the context in which the Title IX Sexual Harassment occurs.

F. For the purpose of this policy, **Formal Complaint** is defined as a document filed by a Complainant or signed by the Title IX Coordinator alleging Title IX Sexual Harassment against a Respondent and requesting that MSMU investigate the allegation of Title IX Sexual Harassment. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in an education program or a University-sponsored Activity, with which the Formal Complaint is filed. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail.

The term "document filed by a Complainant" is defined as a document or electronic submission that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party to the case.

G. For the purpose of this policy, **Preponderance of the Evidence** means such evidence as when weighed with that opposed to it has more convincing force and the greater probability of truth.

H. For the purpose of Formal Complaints filed under Title IX in regard to this policy, **Respondent** is defined as an individual who has been reported to be the perpetrator of conduct that could constitute Title IX Sexual Harassment.

I. For the purpose of this policy, **Reasonably Prompt Time Frame** is defined as the amount of time necessary for the Title IX Coordinator to file the Formal Complaint; Investigator(s) to schedule and conduct the relevant and necessary interviews, so as to put together a comprehensive investigative Report that includes inculpatory and exculpatory evidence; the time needed to schedule and meet with the Complainant, Respondent, Witnesses and Advisors to present the evidence and investigation Report to them and explain the Title IX hearing process; to give the Complainant, Respondent and Advisors seven business days to review and respond to the evidence and investigative Report; to schedule and conduct the Title IX hearing; and to write the final decision letter. The same time frame applies to the appeals process as well as the informal resolution process. In normal circumstances and assuming timely cooperation from the parties and witnesses, staff will use their best efforts to complete this process within 120 days.

While MSMU strives to make decisions as quickly as possible, given the sensitivity of the allegations at hand, MSMU recognizes that good cause delays may occur. Good cause delays include, but are not limited to, the following: absence of a party, a party's Advisor or a Witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. MSMU will communicate in writing to the Complainant, Respondent and relevant participants, if a good cause delay occurs.

J. For the purpose of this policy, **Report** is defined as an allegation of Title IX Sexual Harassment that is brought to the attention of the Title IX Coordinator by either the individual who experienced the Title IX Sexual Harassment or someone other than the person who experienced the Sexual Harassment. A Report becomes a Formal Complaint when it is signed by either the Complainant or the Title IX Coordinator.

K. For the purpose of this policy, **Retaliation** is defined as adverse, non-permitted action taken by an individual or a third party against a person who Reports a violation of this policy, assists someone with a Report of a violation of this policy or

participates in any manner in an investigation or resolution of a Report of a violation of this policy. Retaliation may, among other non-permitted conduct or behaviors, include threats, intimidation, coercion, harassment, spreading negative information about an individual, exclusions from academic and non-academic programs and/or adverse actions related to employment.

L. For the purpose of this policy, **Sexual Assault** is defined as engaging in sexual intercourse, or any of the sexual activities listed below, with another person without that person's Consent. Sexual Assault includes, but is not limited to, rape, sexual battery, anal intercourse, oral copulation or penetration of a body cavity by a foreign object. Sexual intercourse includes the penetration, however slight, of the vagina or anus with any object or body part and of the mouth with a body part and/or object in a sexual manner.

M. For the purpose of Formal Complaints filed under Title IX, **Title IX Sexual Harassment** is defined as unwelcome conduct by an employee conditioning the provision of an MSMU educational aid, benefit or service on an individual's participation in unwelcome sexual conduct; or unwelcome conduct on the basis of sex against a person in the United States determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to an MSMU education program or activity.

N. For purposes of this policy, **Stalking** is defined as engaging in a course of conduct directed at a specific person(s) that would cause a reasonable person under similar circumstances and with similar identities to the Complainant to fear for their safety or the safety of others; or suffer substantial emotional distress.

For the purposes of this definition 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.

For the purposes of this definition substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

O. For the purpose of this policy, **Supportive Measures** is defined as 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 MSMU's education program without unreasonably burdening the other party, including measures designed to protect the safety of all parties, MSMU's educational environment, and/or deter Title IX Sexual Harassment.

P. For the purpose of this policy, **Title IX Coordinator** is defined as MSMU's authorized employee who coordinates the University's efforts to comply with its responsibilities under Title IX, including, but not limited to, receiving Reports of Title IX Sexual Harassment. To file a Report, or to ask any questions about Title IX, please contact MSMU's Title IX Coordinator, who can be reached at 213.477.2803 or TitleIX@msmu.edu.

Deputy Title IX Coordinators include:

1. Title IX Deputy/Associate Provost

Contact: Michele Starkey

Phone: (310) 954-4086

Email: mstarkey@msmu.edu

2. Interim Title IX Deputy/Assistant Director of Human Resources

Contact: Akosua Amporful
Phone: (310) 954-4036
Email: aamporful@msmu.edu

3. Title IX Deputy/Associate Dean for Student Life and Leadership

Contact: Chinako Belanger
Phone: (310) 954-4350
Email: cbelanger@msmu.edu

III. Title IX Law

Title IX is a federal civil rights law that prohibits discrimination on the basis of sex in education programs and activities.

MSMU does not discriminate on the basis of sex. MSMU encourages prompt Reporting of Title IX Sexual Harassment. Under Title IX, MSMU has a responsibility to respond promptly and equitably to address Title IX Sexual Harassment.

Once MSMU has actual knowledge of a Report of Title IX Sexual Harassment, MSMU will take immediate action to eliminate the Title IX Sexual Harassment, MSMU will move to provide support and resources to the Complainant and, in the instance of a Formal Complaint being filed, MSMU will provide supportive resources to the Respondent, provide an equitable investigation and conduct process, including offering supportive resources to the Respondent, intended to restore equal access to education for all involved participants.

If you believe that MSMU does not respond appropriately to your allegations of Title IX Sexual Harassment as defined by Title IX after you have filed a Report with the Title IX Coordinator or designee or gone through the conduct process, you have the option to file a complaint with the Office for Civil Rights.

A. You may file a complaint:

1. In person: via telephone 800.421.3481; or
2. Online: via e-mail: OCR@ed.gov; or
3. By mail, write letter to:
U.S. Department of Education Office for Civil Rights Lyndon Baines Johnson Department of
Education Building
400 Maryland Avenue, S.W. Washington, D.C. 20202-1100

B. For more information about filing a complaint please visit:
www2.ed.gov/about/offices/list/ocr/complaintintro.html

IV. Complainant and Respondent Rights

A. In accordance with Title IX, MSMU has instituted a grievance process that is intended to be fair and equitable to both the Complainant and Respondent. In observance of that goal of equity, both Complainants and Respondents in Title IX Sexual Harassment cases have the right to:

1. Access to an Advisor, if they do not have one of their own choosing, to assist with the conduct process (in

particular cross examination during a conduct hearing). Complainants and Respondents may select the Advisor of their choice, regardless of family relationship or lack of affiliation to the University (see Section VI(B)(3));

2. Receive a written notification of available on-and off-campus counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid and other services available as well as notification of the procedures for institutional disciplinary action and their rights and options as defined in Title IX Sexual Harassment cases;
3. Request and receive Supportive Measures as approved by the Dean of Student Life in collaboration with the Title IX Coordinator;
4. File a Report with the Title IX Coordinator, or designee;
5. File a police report and take legal action separate from and/or in addition to filing a Title IX Sexual Harassment Report;
6. Notice, in writing, that a Formal Complaint has been filed;
7. Present material and/or expert Witnesses;
8. Have their Advisor cross-examine the opposing party and any Witnesses during a Title IX hearing to determine credibility of information;
9. Be informed of the disciplinary finding (responsible or not responsible) as well as the reasoning behind the decision in writing; and
10. Appeal rights as outlined in this policy, [Section VII](#).

V. Reporting a Title IX Complaint

Choosing to Report a Title IX complaint takes bravery and MSMU encourages all Students to Report Title IX Sexual Harassment (including Sexual Assault), Dating Violence, Domestic Violence or Stalking, regardless of the amount of time that has passed since the alleged misconduct occurred.

Once a Report is received, the Title IX Coordinator, or designee, will explain to the Complainant the process for filing a Formal Complaint, as well as discuss the availability of Supportive Measures (regardless of whether the Complainant chooses to file a Formal Complaint). A Report becomes a Formal Complaint once the Complainant or, in some instances, the Title IX Coordinator, signs the complaint.

MSMU provides Supportive Measures to every Complainant and Respondent, regardless of whether a Formal Complaint is ever filed, and regardless whether a Student agrees to be interviewed by Campus Security.

A. How to Make a Report

Any person may report sex discrimination, including Title IX Sexual Harassment, regardless of whether or not the person Reporting is the person alleged to be the victim of the conduct that could constitute sex discrimination or Title IX Sexual Harassment.

Complainants, Mandated Reporters, and any other person who wishes to make a report of sexual harassment to the University under this Title IX – Sexual Harassment Policy may do so at any time (including during non-business hours), in

person, by email, by regular mail, by telephone, or by any other means, using the contact information for Campus Security, the Title IX Coordinator and Deputies identified above in Section III, , provided that the method of reporting results in the Title IX Coordinator or Deputies receiving the person's verbal or written report.

Reports of sexual harassment to the University under this Title IX – Sexual Harassment Policy may also be made by submitting a report through the Harassment, Discrimination (Including Sexual Misconduct), and Retaliation [online Reporting Form](#).

If Campus Security, or a Deputy Title IX Coordinator, receives the report, they will promptly notify the Title IX Coordinator, or designee. Once the Title IX Coordinator, or designee, receives the report, the Title IX Coordinator, or designee, will contact the Complainant to explain the process for filing a Formal Complaint, as well as discuss the availability of Supportive Measures (regardless of whether the Complainant chooses to file a Formal Complaint). A complaint becomes a Formal Complaint once the Complainant or, in some instances, the Title IX Coordinator signs the complaint.

If a Complainant elects not to file a Formal Complaint once the Title IX Sexual Harassment is Reported, the Complainant will be contacted by the Title IX Coordinator, or designee, to discuss filing a Formal Complaint and the availability of Supportive Measures, even if a Formal Complaint is not filed. If the Complainant chooses not to file a Formal Complaint, they may still receive Supportive Measures, and they retain the right to revisit filing a Formal Complaint at a later date.

In line with the Good Samaritan Self Reporting Policy found in the Community Standards Book, violations of the Student Conduct Code regarding underage or excessive consumption of alcohol and/or marijuana or use or possession of illegal substances will not be utilized to commence disciplinary proceedings against a Complainant if the information is divulged through the process of reporting Title IX Sexual Harassment. The University does reserve the right to refuse to grant amnesty to Reporters under certain extenuating circumstances. Criminal investigations and other police action may still occur at the discretion of the law enforcement agency responding to the incident.

B. Supportive Measures

Complainants and/or Respondents are entitled to receive Supportive Measures, including Complainants who opt not to file a Formal Complaint. Supportive Measures shall be designed and implemented in a manner intended to achieve their purpose while at the same time limiting, to the extent practicable, any adverse effect to the Complainant's and/or Respondent's education program. Supportive Measures provided to either the Complainant or Respondent are kept private, to the extent that maintaining privacy does not impair MSMU's ability to provide the Supportive Measures.

Supportive Measures may include, but are not limited to, counseling, academic, residential, transportation and/or employment accommodations, as well as mutual restrictions on contact between the Complaint and Respondent. Supportive Measures can extend through the pendency of conduct procedures and potentially beyond as necessary.

Any such Supportive Measure shall not be referred to or offered as evidence at the hearing on the underlying charge.

C. Athenian Resource Coordinators (ARC) When an allegation of Title IX Sexual Harassment is brought to the attention of MSMU, the Deputy Title IX Coordinator, or designee, will assign an Athenian Resource Coordinator ("ARC") to both the Complainant and the Respondent (if a Respondent has been identified). Complainants will be assigned an ARC regardless of whether they file a Formal Complaint or participate in any conduct process.

The ARCs are members of the Division of Student Affairs who are trained to assist the Complainant and Respondent in identifying University and external resources and facilitating Supportive Measures for Complainants and/or

Respondents. The role of the ARC is to:

1. Provide information, in writing, regarding resources on and off campus such as the Student Health Services (“SHS”), Counseling and Psychological Services (“CPS”), Campus Ministry, Residence Life and Housing Services, Office of the Dean of Student Life, Campus Security, proper law enforcement authorities, the Rape Treatment Center at Santa Monica-UCLA Medical Center, and Peace Over Violence.
2. Explain all stages of the Title IX and/or University conduct process, including potential outcomes for both Complainant and Respondent;
3. Provide information, explanation and review so that the Complainant and Respondent can make an informed decision about the options available to them, including Reporting to law enforcement, filing a Formal Complaint, filing and responding to Student Conduct Code complaints, documenting their decisions and requesting Supportive Measures;
4. Follow up with the Student throughout the Title IX and or University conduct process and thereafter to ensure that no Retaliation is taking place and to continue to provide the Student access to the resources that the Student requires.

VI. Title IX Conduct Process

Once a Formal Complaint is received, MSMU will address allegations of Title IX Sexual Harassment through the conduct process outlined below. MSMU’s Title IX conduct process strives to treat Complainants and Respondents equitably by adhering to the conduct process outlined in the 2020 Title IX Regulations.

Disciplinary sanctions for Title IX Sexual Harassment range from disciplinary warning up through dismissal from the University.

A. Formal Complaint Process and Investigations

1. Notice of Allegations

Upon receipt of a Formal Complaint, MSMU will provide written notice to both the Complainant and Respondent of the following:

- a. Notice of MSMU’s conduct process;
- b. Notice of the allegations of Title IX Sexual Harassment (including Sexual Assault, Dating Violence, Domestic Violence and Stalking) and sufficient details known at the time;
- c. Notice that the Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility can be made at the conclusion of the conduct process;
- d. Notice that the Complainant is presumed to be acting in good faith in making their Formal Complaint of Title IX Sexual Harassment;
- e. Notice that the Complainant and Respondent may have an Advisor of their choice;
- f. Notice that the Complainant and Respondent may inspect and review evidence gathered during the investigation of the alleged behavior; and

- g. Notice of MSMU's prohibition on knowingly making or submitting false statements during the conduct process. If, in the course of an investigation, MSMU decides to investigate allegations about the Complainant or Respondent that are not included in the initial notice of allegations, MSMU will provide notice of the additional allegations in writing to all parties whose identities are known at the time.

2. Dismissal of Formal Complaint

MSMU will investigate all allegations that are included in a Formal Complaint. However, if the conduct alleged in the Formal Complaint does not constitute Title IX Sexual Harassment including Sexual Assault, Dating Violence, Domestic Violence and Stalking as defined in the 2020 Title IX Regulations, then MSMU is required under the 2020 Title IX Regulations to dismiss the Formal Complaint.

Such a dismissal does not preclude pursuit of the allegations under MSMU's Student-on-Student Sexual and Interpersonal Misconduct Policy or MSMU's Student Conduct Code.

Additionally, MSMU may dismiss the Formal Complaint or any allegations therein, if at any time during the investigation or hearing:

- a. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
- b. The Respondent is no longer enrolled by MSMU; or
- c. MSMU is prevented from gathering sufficient evidence to reach a determination as to the Formal Complaint, including, but not limited to, a Complainant ceasing to participate in the Conduct process.

Upon dismissal of a Formal Complaint, MSMU will send written notice of the dismissal and reason(s) as to why the dismissal occurred, simultaneously to both Complainant and Respondent.

Complainants and/or Respondents are able to appeal the dismissal of a Formal Complaint by submitting their appeal in writing to the Title IX Coordinator or designee within seven business days of receiving a decision regarding the dismissal. Upon receipt of the appeal, the Title IX Coordinator or designee will review all applicable information reasonably in their possession and will submit a written determination to the Complainant and/or Respondent.

3. Title IX Investigation of a Formal Complaint

Once a Formal Complaint is filed, MSMU will conduct an investigation of the allegations.

During the investigation, the Title IX office will schedule and conduct interviews with the Complainant, Respondent and any fact or expert Witnesses. In order to ensure the grievance process is conducted in a reasonably prompt time frame, it is essential that all participants respond promptly to interview request(s).

Interview requests will be submitted in writing to participants and will give participants sufficient time to prepare to participate. The Complainant and Respondent are able to be accompanied to any related meeting or proceeding by the Advisor of their choice, subject to certain restrictions as outlined below. During the investigation, the Complainant and Respondent are encouraged to gather and present relevant evidence.

Prior to the completion of the investigation, both the Complainant and the Respondent and their Advisors will be provided an opportunity to inspect and review any evidence obtained as part of the investigation.

The Complainant and Respondent will have seven business days to submit a written response to the evidence, which the Investigator will consider prior to completion of an investigative Report.

Upon expiration of the seven business days, the investigator(s) will create an investigative Report summarizing all relevant evidence and, at least seven business days prior to a hearing, make the investigative Report available to both the Complainant and the Respondent and their Advisors, for their review and written response.

All evidence subject to the participants' inspection and review will be made available during the Title IX hearing so that both the Complainant and the Respondent have an equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

B. Title IX Hearing Procedure

Students charged with violations of Title IX Sexual Harassment are accorded the following procedural protections:

1. Written or electronic notice (generally, via the official University e-mail account) of misconduct charges, the location of the Student Title IX Policy, a scheduled pre-hearing meeting with a Title IX representative (or the instructions on how to schedule the pre-hearing meeting and timely notice of that pre-hearing meeting);
2. A pre-hearing meeting at which:
 - a. The Complainant/Respondent may ask the Title IX representative questions regarding the conduct process; The Title IX representative shall explain the hearing processes to the parties including cross examination processes and procedures and Student rights and make available the Student Title IX Policy.
 - b. The Title IX representative shall also explain the private nature of the conduct process (Except for appeals, external judicial challenges and where relevant to other student conduct proceedings,) and the fact that the hearing will become part of the file relating to the case;
 - c. The Complainant is informed that no conduct record will be generated in regard to the Complainant, however the Complainant may be permitted future access to the conduct case file.
3. Complainants and Respondents are required to have the assistance of an Advisor during the hearing to perform cross-examination. Complainants and Respondents who have not previously identified their Advisor during the investigation process will be required to inform the Title IX office of the identity of their Advisor prior to scheduling the Title IX hearing. If a Student does not have an Advisor, MSMU will appoint an Advisor to serve with the Student and perform cross-examination during the Title IX hearing on the Student's behalf. The Advisor's role is to assist Students in understanding the conduct process during the investigation and Title IX conduct process. Advisors may not represent the Student during any meeting or hearing during the investigation or Title IX conduct process, outside of the Advisor's role in cross-examination. An Advisor may not appear in lieu of the Student to either the pre-hearing meeting or the Title IX hearing.
4. A Title IX hearing (conducted via videoconferencing) during which the Hearing Panel shall specify the nature of the alleged misconduct and provide the Complainant and the Respondent the opportunity to again review the information and evidence gathered by the University that make up the basis for the charge(s). Students shall have the opportunity to respond to the information gathered by the University, including the right to offer counter information and/or call appropriate fact and/or expert Witnesses.

The Hearing Process will proceed where a Respondent fails to appear after timely notice and a determination of the charged misconduct will be made based upon the facts and evidence submitted in support of the alleged misconduct at that hearing (failure to check one's e-mail is not sufficient justification for not attending a scheduled hearing). A Student Complainant who fails to appear after timely notice will be deemed to have abandoned their complaint and the charges will be dismissed unless the University is presenting the case and the facts and evidence presented in

support of the charged misconduct independent of the Complainant warrants the continuation of the conduct process;

5. The Respondent's Advisor, via videoconferencing, will be permitted the opportunity to ask questions of the Complainant, and any Witnesses that appear either at the request of the Complainant, the Respondent or the University, in order to assess the credibility of the information offered. Conduct Officers on the Hearing Panel will review each question after it has been asked and may be permitted to disallow a question asked by the Respondent's Advisor if the Respondent's Advisor is unable to provide sufficient rationale for the relevancy of the question.

The Complainant's Advisor, via videoconferencing, will be permitted the opportunity to ask questions of the Respondent, and any Witnesses that appear either at the request of the Complainant, the Respondent or the University, in order to assess the credibility of the information offered. Conduct Officers on the Hearing Panel will review each question after it has been asked, and may be permitted to disallow a question asked by the Complainant's Advisor if the Complainant's Advisor is unable to provide sufficient rationale for the relevancy of the question;

6. Both the Complainant and the Respondent will be permitted the opportunity to make a closing statement at the conclusion of the evidentiary portion of the hearing;

7. If a further hearing is necessary, a supplemental proceeding will be scheduled:

a. Complainants, Respondents or the Hearing Panel may submit new and or additional evidence and call appropriate fact and/or expert Witnesses at the supplemental proceeding. Students shall have the opportunity to respond to any new or additional evidence that is presented for the first time at the supplemental proceeding;

b. Complainants and Respondents may utilize the assistance of an Advisor during the supplemental hearing;

8. Sanctions shall be levied if it is determined that the Respondent is responsible for the violation(s). If not, the charge(s) will be dismissed;

9. Complaints will be promptly investigated and adjudicated following the procedures herein outlined;

10. For compliance with Clery Act record retention requirements, all official conduct-related correspondence will be retained for a minimum of seven years;

11. A Student's conduct history and record is cumulative; therefore, increased sanctions may be imposed to take into consideration the Respondent's overall record of violations of all types, not just those of a similar type;

12. Unless required by law, privacy laws prevent notification or disclosure to Student Complainants about the prior conduct history, if any, of the Respondent.

C. Hearing Procedures for Title IX Conduct Process The following procedural guidelines shall be applicable in Title IX conduct proceedings:

1. Title IX Hearings will generally be private except for the Hearing Panel, parties and Advisors. Title IX hearings will be recorded via videoconferencing software utilized by the Hearing Panel only. Recording devices (audio and/or video) of any kind are not permitted for use by the Students, Witnesses or Advisors. The recording of the hearing will be part of the conduct file and may be accessible to both the Complainant and Respondent by contacting the Title IX office;

2. The Hearing Panel shall exercise control over the procedures to avoid needless consumption of time. Any person, including an Advisor, who is disruptive during the Title IX hearing, refuses to follow the rules or procedures and/or fails to adhere to the admonitions and rulings of the Hearing Panel may be excluded from the proceedings. If an Advisor is excluded during a Title IX hearing, the hearing will be halted and rescheduled at a later date to accommodate the Student procuring a different Advisor of their choice or being provided an Advisor by MSMU;
3. The decision of the Hearing Panel shall include an identification of the initial allegations, a brief description of the procedural steps followed by MSMU to respond to the allegations, a summary of the testimony and evidence in support of the findings, the findings, decision and applicable sanction(s) and additional supportive measures for the Complainant (if any). The decision shall be sufficiently detailed to permit review as provided in the Code and as authorized or required by law will be sent to both the Respondent and the Complainant;
4. Prior to the hearing, Students may challenge a Hearing Panel member on the grounds of personal bias. Any such challenge must be made in writing to the Chief Conduct Officer, or designee, not less than two business days prior to the hearing. The disqualification challenge of a Hearing Panel member shall be determined by the Dean of Students, or designee. If a challenge is sustained, the charge shall be referred to another Hearing Panel member;
5. Witnesses shall be required to affirm that their testimony is truthful and may be subject to charges of providing false information pursuant to section VI(E) of the Student Conduct Code. If a Witness refuses to participate in the Title IX hearing, their prior or subsequent statements will not be utilized or relied upon by the Hearing Panel in coming to a decision;
6. The burden of proof shall be upon MSMU who must establish the responsibility of the Respondent by a Preponderance of the Evidence;
7. Except as provided herein, formal rules of evidence and discovery shall not be applicable in proceedings conducted pursuant to the Code. The Hearing Panel shall give effect to recognized rules of privacy (including the Family Educational Rights and Privacy Act [FERPA]) and privilege but shall otherwise admit all matters into evidence that a reasonable person would accept as having probative value in the conduct of their affairs. Unduly repetitious or irrelevant evidence may not be considered in the decision;
8. Written statements, absent testimony by the Witness that is subject to cross-examination, shall not be admitted into evidence nor used for any purpose.

D. Privacy

MSMU will keep private the identity of any individual who has made a Report or complaint alleging Title IX Sexual Harassment as defined by the 2020 Title IX Regulations, as well as the name of the Complainant(s), Respondent(s) or any Witnesses of the alleged behavior to the extent practicable to fulfill the requirements of the 2020 Title IX Regulations. Once a Formal Complaint has been filed, MSMU will maintain the privacy of involved individuals to extent practicable to fulfill the grievance process outlined by the 2020 Title IX Regulations.

VII. Title IX Appeal Procedures

A. Any decision by the Hearing Panel or disciplinary sanction assigned may be appealed by the Respondent or the Complainant to the Chief Conduct Officer, or designee. Appeals are limited to one or more of the following grounds:

1. The sanction is substantially disproportionate to the offense;
2. The procedures provided for in the Code were not materially followed resulting in significant prejudice to the Appellant;
3. New relevant evidence is available, which in the exercise of reasonable diligence could not have been produced at the time of the hearing;
4. The decision is not supported by substantial evidence; or
5. The Title IX Coordinator, Investigator(s) or Conduct Officer(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 matter.

B. All petitions for appeals shall be submitted to:

Chief Conduct Officer
c/o The Office of the Dean of Student Life
Chalon Campus, Humanities 200
DeanofStudentLife@msmu.edu

C. Appeal petitions must be submitted by the involved Student party (Respondent or Complainant) via written statement and received by the Chief Conduct Officer c/o ODSL within seven business days from the date of the imposition of the original decision. Appeal petitions may not be submitted by Advisors or third parties (including, without limitation, lawyers) on behalf of the involved Student party. Failure to file the appeal petition within the seven-day limitations period results in the decision becoming final and conclusive.

Failure to comply with these procedures may result in the rejection of an appeal petition.

D. Pursuant to Section VII(A) the appeal petition must be accompanied by a written statement in support of the appeal. Upon notification of the receipt of a proper and timely appeal petition, the Chief Conduct Officer, or designee, shall convene the Appeals Committee. The non-appealing party (either Complainant or Respondent) will be notified of an appeal and be afforded the opportunity to submit a timely written statement in opposition to the appeal.

E. Pursuant to Section VII(A), the Appeals Committee will review the video and audio recording of the live hearing, the findings, decision and recommended sanctions (if applicable), the Respondent's disciplinary history and the written statement of the Respondent and of the Complainant filed with the appeal petition or in response to the appeal petition.

F. The Appeals Committee may, but is not required to, request the Hearing Panel or the involved Student parties to submit additional information in writing. If the Hearing Panel or any Student parties is/are requested to submit additional information, the Student parties not so requested shall be entitled to reply in writing to the additional written information supplied to the Appeals Committee.

G. So long as supported by the evidentiary record, the Appeals Committee shall give deference to the determinations of the Hearing Panel, and may make one of the following recommendations:

1. Recommended sanctions may be reduced, if found to be substantially disproportionate to the offense or affirmed;

2. The case may be referred back to the Vice President for Student Affairs, or designee, for reassignment to a new Hearing Panel if bias was detected and/or if specified procedural errors in interpretation of the Code were so substantial as to effectively deny the Student a fair hearing, or for reassignment to the original Hearing Panel if significant new evidence became available, which could not have been discovered by a properly diligent Student before or during the original hearing;
3. The determination should be reversed, if the decision is not supported by substantial evidence;
4. The Appeals Committee shall not alter the underlying decision of the Hearing Panel if supported by substantial evidence and reasonable inferences arising therefrom.

H. Both parties shall have the opportunity to submit an appeal and absent an appeal by both parties, the non-appealing party shall have the opportunity to submit a written statement in either support or opposition to the extant appeal petition. Both parties will be notified of the results of the appeal.

I. Concurrent with the filing of an appeal petition, Complainants or Respondents may challenge a member of the Student Conduct Committee on the grounds of personal bias. All disqualification challenges of the Appellate Authority shall be determined by the Vice President for Student Affairs, or designee. If a challenge is sustained, the proceedings will continue without the participation of the disqualified member in the event that a quorum exists with the remaining members. If disqualification results in the lack of a quorum a new Committee will be assembled without the previously challenged member.

J. Except as provided herein, formal rules of evidence and discovery shall not be applicable in these proceedings conducted pursuant to the Code. The Appellate Authority shall give effect to the recognized rules of privacy (including FERPA) and privilege but may otherwise admit matters into evidence which reasonable persons would accept as having probative value in the conduct of their affairs. Unduly repetitious or irrelevant evidence may be excluded.

K. The Appeals Committee may take presumptive notice of matters that would be of general knowledge to other University Students.

L. The Appeals Committee shall be provided copies of the Student's disciplinary record when reference to the Student's disciplinary history is included in the decision made by the Hearing Panel.

M. A quorum for the Appeals Committee shall be a three members with a minimum of one faculty or staff member.

N. Procedural, evidentiary and final recommendations of the Appeals Committee shall be by majority vote of the members present and voting. A tie vote in an appeal proceeding will result in affirmation of the original decision. Procedural or evidentiary issues in any hearing before the Appeals Committee shall be determined by the Committee's Presiding Officer in accordance with the Code.

VIII. Title IX Informal Resolution Process

If the Complainant and Respondent both agree to go through the informal resolution process, the Title IX office may opt to postpone initiation of the Title IX conduct process in matters deemed potentially appropriate for an informal resolution process.

The Title IX informal resolution process at MSMU is voluntary for all participants, and the appropriateness of such process must be concurred in by the University and allows a Respondent to accept responsibility for the harm caused. As part of the successful completion of the informal resolution process, the Respondent will not be charged

with a violation of the Student Conduct Code. The Title IX informal resolution process is designed to redress the harm caused by the underlying conduct and prevent its recurrence in a manner that meets the needs of the Complainant and effected parties while still maintaining the safety of the overall campus community.

Upon receipt of a Formal Complaint, the Complainant may be offered the opportunity to resolve the complaint through an informal resolution process. Should a Complainant or Respondent wish to bring their complaint through the informal resolution process, they will need to let the Title IX Coordinator, or designee, know in writing. Prior to the resolution of the informal process, the Complainant and/or Respondent are permitted to request the informal resolution process end and go through the Title IX conduct process.

The initial determination of eligibility for the informal resolution process will be left to the Assistant Vice President for Student Affairs or designee, and the Assistant Vice President for Student Affairs, or designee, reserves the right to terminate the process at any time

Prior to the process beginning, the Complainant and Respondent will need to provide their voluntary written Consent to move forward with the informal resolution process. If one party does not agree to go through the process, then the formal conduct process will commence.

Once the voluntary, written Consent is provided, the Complainant and Respondent will be provided written notice disclosing the allegations and the requirements of the informal resolution process.

If the informal resolution process is not accepted or fully completed by all parties, then the matter may be referred back to the Title IX Coordinator, or designee, and the Title IX grievance process will be initiated.

IX. Retaliation

Retaliation is strictly prohibited and will not be tolerated by MSMU.

All persons, including University faculty and staff, are prohibited from taking any retaliatory action against any other member of the University Community including, but not limited to, the Complainant, Respondent or Witnesses to an alleged incident of sexual or interpersonal misconduct. Any Student engaging in any retaliatory action(s) will be subject to discipline under the Student Conduct Code and appropriate sanctions for determined violations may include dismissal from the University

Retaliation by non-students will be adjudicated and determined in accordance with the Policy Prohibiting Unlawful Discrimination, Harassment and/or Retaliation. Any Student who believes that they have been retaliated against for having filed, or being named in, a complaint for sexual or interpersonal misconduct or having participated in the investigation of such a complaint, should promptly notify Campus Security at 310.954.4123 or 213.477.2502 or the Title IX Coordinator. Any person who believes that they have been retaliated against for the above-mentioned reasons by a faculty or staff member as an individual or on behalf of the University should contact the Title IX Coordinator at TitleIX@msmu.edu or 213.477.2803.