

# MSMU Student-on-Student Sexual and Interpersonal Misconduct Policy and Protocol

## I. Introduction

Mount Saint Mary's University, Los Angeles ("MSMU") is committed to providing a learning, working, and living 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. Students are 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 ("Title IX") is a federal law that prohibits discrimination on the basis of sex in education programs and activities. For more information regarding Title IX, and the MSMU policy regarding Title IX Sexual Harassment, please see the Student Title IX Policy. This policy deals with sexual misconduct that falls outside the Title IX 2020 Regulations definition of Sexual Harassment. Sexual Misconduct under this policy includes all forms of sexual misconduct not covered under Title IX including Sexual Assault and Sexual Exploitation and other interpersonal misconduct such as Dating Violence, Domestic Violence and Stalking. The Division of Student Affairs has established this Student-on-Student Sexual & Interpersonal Misconduct Policy & Protocol to assist and respond to non-Title IX complaints of student-on-student sexual and interpersonal misconduct.

Students should report all forms of sexual misconduct (student-on-student; student and non-student; faculty/staff-on-student) and interpersonal misconduct to a Student Affairs professional staff member, the Vice President for Student Affairs, the Title IX Coordinator or by filing a report with Campus Security (either in person, by phone, 310.954.4123/Chalon or 213.477.2502/Doheny, or through the [online Reporting Form](#)).

A Student Conduct Code case for alleged student-on-student sexual or interpersonal misconduct that is not covered under the Title IX Policy will be initiated and adjudicated under the relevant provisions of the Student Conduct Code.

Sexual or interpersonal misconduct involving a Student and any non-student in the University Community is handled under the [Policy Prohibiting Unlawful Discrimination, Harassment, and/or Retaliation](#). Should a Student report sexual or interpersonal misconduct that occurred to the Student when they were a child, MSMU is required to contact local law enforcement to report the child abuse.

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 that may include dismissal from the University.

Upon the declaration of a campus emergency, or in the event that campus is closed due to emergency circumstances, all student policies and procedures remain in effect. However, the Vice President for Student Affairs, or designee, may temporarily suspend and/or revise existing policies, procedures or processes for the

health and safety of the campus community and to assist and support the University's efforts during the emergency and subsequent recovery.

For additional information on sexual and interpersonal misconduct awareness, prevention and training, including bystander intervention, programming and events on campus intended to bring awareness to these issues and opportunities for you to get involved, please visit the [Lotus Initiative website](#). The Lotus Initiative is the Mount's dedicated education, support, and training efforts to create a campus culture where students are confident and comfortable identifying, preventing, intervening, and seeking help for incidents of sexual violence, domestic violence, dating violence and stalking.

## II. Definitions

A. For purposes 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.

B. For purposes of this policy, **Sexual Misconduct** is defined as unwelcome conduct of a sexual nature including, but not limited to, unwelcome sexual advances, unsolicited requests for sexual favors, or physical conduct of a sexual nature, such as making contact with an intimate body part (including, but not limited to: the mouth; the sex organs; the anus; the groin; the buttocks and/or the breasts) of another person without that person's consent, including as a result of sexual coercion.

For purposes of this policy, Sexual Misconduct includes, but is not limited to, exposing one's genitals in non-consensual circumstances, coercing another against their will to expose their genitals or breasts and prostituting another person.

C. For purposes of this policy, **Sexual Exploitation** is defined as sexual misconduct that occurs when a person takes unjust or abusive sexual advantage of another for their benefit or for the benefit of anyone other than the exploited party; and that behavior does not otherwise constitute Sexual Assault. Examples of Sexual Exploitation include, but are not limited to, invasion of sexual privacy, audio or video recording or photographing of a sexual nature utilizing webcam, camera, Internet exposure, etc., without knowledge and consent of all persons, going beyond the boundaries of consent (such as letting another person hide and watch you have consensual sex without the knowledge of the other party), engaging in unconsented voyeurism, coercing another against their will to expose their genitals or breasts and prostituting another person.

D. **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 Consent, 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.

E. For purposes 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 cohabited with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under California law or by any other person against an adult or youth victim who is protected from that person's acts under California law.

F. For purposes 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 the Complainant's statement and with consideration of the following factors:
  - a. The length of the relationship;
  - b. The type of the relationship;
  - c. The frequency of interaction between the persons involved in the relationship.

Dating Violence includes, but is not limited to, sexual or physical abuse or threat of such abuse. Dating Violence does not include acts covered under the definition of Domestic Violence.

G. For purposes of this policy, **Stalking** means 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.

**H. Complainant** means the individual(s) who file(s) a Student Conduct Code complaint with the University.

**I. Respondent** means the individual(s) against whom a Student Conduct Code complaint is made.

**J. "Retaliation"** means 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.

### III. California Law

The following excerpts are only partially explanatory of certain California laws pertaining to sexual and interpersonal misconduct. These excerpts are not intended to be an exhaustive description or list of California laws pertaining to sexual misconduct, inappropriate or criminal sexual behavior or interpersonal misconduct.

**A.** Excerpts from Sections 11165.1 and 261 of the California Penal Code: Sexual Assault includes rape, statutory rape, rape in concert, incest, sodomy, lewd or lascivious acts upon a child, oral copulation, sexual penetration, child molestation and the following:

1. Penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is emission of semen.
2. Sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.
3. Intrusion by one person into the genitals or anal opening of another person, including the use of an object for this purpose, except that, it does not include acts performed for a valid medical purpose.
4. The intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs and buttocks or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose.
5. The intentional masturbation of the perpetrator's genitals in the presence of a child.

Rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator, under any of the following circumstances:

1. Where a person is incapable, because of a mental disorder or developmental or physical disability, of giving legal Consent, and this is known or reasonably should be known to the person committing the act.
2. Where it is accomplished against a person's will by means of force, violence, duress, menace or fear of immediate and unlawful bodily injury on the person or another.
3. Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused.
4. Where a person is at the time unconscious of the nature of the act, and this is known to the accused.

As used in this paragraph, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

- a. Was unconscious or asleep.
- b. Was not aware, knowing, perceiving or cognizant that the act occurred.
- c. Was not aware, knowing, perceiving or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.
- d. Was not aware, knowing, perceiving or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.
5. Where a person submits under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense or concealment practiced by the accused, with the intent to induce the belief.
6. Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury or death. Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. The perpetrator does not actually have to be a public official.

California law also states that "The essential guilt of rape consists in the outrage to the person and feelings of the victim of the rape. Any sexual penetration, however slight, is sufficient to complete the crime" (Penal Code section 263). California law further defines both marital rape (Penal Code section 262) and "statutory rape" (Penal Code section 261.5). Though laws vary from state to state, intercourse in which Consent was not obtained or was obtained under coercive conditions will usually be considered rape.

**B. Excerpt from Section 67386 of the California Education Code:**

The governing boards of independent postsecondary institutions shall adopt a policy concerning Sexual Assault, Domestic Violence, Dating Violence and Stalking, as defined in the federal Higher Education Act of 1965 involving a Student, both on and off campus. This policy shall include an affirmative Consent standard in the determination of whether Consent was given by both parties to sexual activity.

“Affirmative Consent” means affirmative, conscious and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that they have the affirmative Consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean Consent, nor does silence mean Consent. Affirmative Consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of Consent.

C. Excerpts from Section 261.6 and 261.7 of the California Penal Code:

In prosecutions under Section 261, 262, 286, 287 or 289, in which Consent is at issue, “Consent” shall be defined to mean positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved.

A current or previous dating or marital relationship shall not be sufficient to constitute Consent where Consent is at issue in a prosecution under Section 261, 262, 286, 287 or 289. Nothing in this section shall affect the admissibility of evidence or the burden of proof on the issue of Consent. In prosecutions under Section 261, 262, 286, 287 or 289, in which Consent is at issue, evidence that the victim suggested, requested or otherwise communicated to the defendant that the defendant use a condom or other birth control device, without additional evidence of Consent, is not sufficient to constitute Consent.

D. Excerpts from Section 646.9 of the California Penal Code:

Any person who willfully, maliciously and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for their safety, or the safety of their immediate family is guilty of the crime of Stalking, punishable by:

1. Imprisonment in a county jail for not more than one year, or
2. By a fine of not more than \$1,000, or
3. By both that fine and imprisonment, or by imprisonment in the state prison.

For the purposes of this section, “harasses” means engages in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments or terrorizes the person, and that serves no legitimate purpose. For the purposes of this section, “course of conduct” means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of “course of conduct.”

E. Excerpts from Section 13700 of the California Penal Code and 6211 of the California Family Code:

“Domestic Violence” means abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant or person with whom the suspect has had a child or is having or has had a dating or engagement relationship, a child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected or any other person related by consanguinity or affinity within the second degree.

For purposes of this subdivision, “cohabitant” means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabitating include, but are not limited to: terrorizes the person, and that serves no legitimate purpose. For the purposes of this section, “course of conduct” means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of “course of conduct.”

F. Excerpts from Section 13700 of the California Penal Code and 6211 of the California Family Code:

“Domestic Violence” means abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant or person with whom the suspect has had a child or is having or has had a dating or engagement relationship, a child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected or any other person related by consanguinity or affinity within the second degree.

For purposes of this subdivision, “cohabitant” means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to:

1. Sexual relations between the parties while sharing the same living quarters;
2. Sharing of income or expenses;
3. Joint use or ownership of property;
4. Whether the parties hold themselves out as spouses;
5. The continuity of the relationship; and
6. The length of the relationship.

#### IV. Privacy

A. MSMU identifies “responsible employees” as those who are obligated to report all details of an incident, including the identities of those involved, to Campus Security and/or the Title IX Coordinator whenever that information is brought forward to the employee. Campus Security will notify the Title IX Coordinator when a report has been filed.

Students reporting an incident of sexual or interpersonal misconduct to a responsible employee may request that their information be kept private. Students should be aware that if they request for their information to remain private, then the University’s ability to effectively investigate and adjudicate the instance(s) of sexual or interpersonal misconduct may be impaired. The University cannot guarantee privacy in this instance, and the following factors will be considered by the Title IX Coordinator in consultation with the Vice President for Student Affairs, or designee, in determining whether the privacy request can be honored or if an investigation is necessary:

1. The Respondent has known prior allegations of sexual or interpersonal misconduct and a potential for a campus safety risk exists; or
2. The location in which the alleged incident occurred is a location where previous complaints of sexual or interpersonal misconduct occurred creating the potential for an unsafe environment for the MSMU community; or
3. A threat to the campus community at large or a particular community member has been identified; or
4. The sexual or interpersonal misconduct was perpetrated with a weapon; or
5. The victim is a minor; or

6. Some combination of the above factors exists.

The Title IX Coordinator, in consultation with the Vice President for Student Affairs or a designee, is responsible for determining whether the request of the Complainant to have information kept private can be honored. If the decision is made that confidentiality cannot be honored, then the University will only inform the necessary individuals and entities on campus required to perform a thorough investigation and adjudication of the complaint. The University will respond to any accusations of Retaliation against the Complainant or Witnesses brought upon by the investigation or adjudication of the misconduct

B. Responsible employees include faculty, administrative staff and some student staff. Responsible employees do not include the following:

1. Professional, licensed counselors, such as the psychologists at Counseling and Psychological Services (CPS) 310.954.4114/Chalon or 213.477.2668/Doheny, are not required to report any information regarding an alleged sexual or interpersonal misconduct, to Campus Security, the Title IX Coordinator or any other reporting body, without consent from the Student.

Catholic priests and women religious are not required to report any information regarding an alleged sexual or interpersonal misconduct to Campus Security, the Title IX Coordinator or any other reporting body, without Consent from the Student provided they receive the information in performance of their pastoral duties.

2. Student Health Services (SHS) Staff, such as doctors and nurse practitioners at SHS 310.954.4110 or 213.477.2685/Doheny, are not required to report any information regarding an alleged sexual or interpersonal misconduct, to Campus Security, the Title IX Coordinator or any other reporting body on campus, without Consent from the Student. SHS Staff will be required to report signs of physical or sexual abuse to law enforcement.

## V. Sexual & Interpersonal Misconduct Policy

A. Any Student alleged to have participated in sexual or interpersonal misconduct will be referred to the Office of the Dean of Student Life (ODSL) and, if found responsible, will be subject to disciplinary action. Complainants of sexual and interpersonal misconduct are not required to be members of the MSMU community; they may be third parties or others unaffiliated with the University. If a Complainant chooses not to participate in the University conduct process, the University reserves the right to initiate the conduct process if, in the opinion of ODSL, sufficient evidence exists without the participation of the Student Complainant to present the case to the Conduct Officers and obtain a determination of a violation by the alleged Respondent utilizing the Preponderance of the Evidence standard. Outcomes related to sexual and interpersonal misconduct cases run the full spectrum as outlined in Section IV of the Student Conduct Code and include disciplinary warning through suspension or dismissal from the University.

B. All alleged incidents of student-on-student sexual and interpersonal misconduct will be adjudicated in accordance with the Student Conduct Code utilizing the Preponderance of the Evidence standard and will involve a hearing with cross examination. Student Conduct Code proceedings shall be prompt, fair and impartial and adjudicated by officials that have received regular training regarding incidents of this nature.

C. In cases alleging sexual and interpersonal misconduct the Vice President for Student Affairs, or designee, may institute supportive measures, including, but not limited to, academic, residential, transportation and/or employment accommodations, intended to ensure the well-being of the Complainant, the Respondent, the investigatory process and/or the University Community while the complaint is being investigated and prior to the determination on the charge. Any such supportive measures shall not be referred to or offered as evidence at the

hearing on the underlying charge. Any such 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 educational program. Any such supportive measures shall remain confidential, to the extent practicable to achieve the measure. Both Complainant and Respondent will receive written notification of their access to supportive measures.

D. No Contact Orders (NCO) will also be utilized by Campus Security both during the investigation and through the completion of the disciplinary process. Both parties will be expected to sign a document stating their awareness of the NCO and the stipulations of no contact, however failure or refusal to sign an NCO by either party does not impact the enforcement of the NCO. Public Safety will provide information about available community resources.

E. In line with the Good Samaritan Policy found in this Community Standards Booklet, 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 sexual or interpersonal misconduct. 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.

F. Student Conduct Code proceedings respecting alleged incidents of sexual and interpersonal misconduct will in the first instance be adjudicated by a panel of not less than three staff Conduct Officers. These Conduct Officers will be regularly trained in the adjudication of these types of incidents. A pre-hearing meeting will be scheduled separately with both the Complainant and the Respondent, where both parties will be permitted to review the investigatory report and supporting evidence, identify additional Witnesses and ask questions about the conduct process. All Student Conduct Code proceedings involving allegations of sexual and interpersonal misconduct will include a hearing with cross examination. Complainants and Respondents will be permitted to ask questions of the opposing party and Witnesses.

All Conduct Officers receive training regarding the adjudication of sexual and interpersonal misconduct. For information regarding what training is conducted please contact the ODSL at 310.954.4130/Chalon or 213.477.2570/Doheny.

G. Prior sexual history of Complainant or Respondent with people outside of each other will not be utilized as evidence in these disciplinary proceedings.

H. Once a Student Conduct Code determination of the charges has been made, a determination notification letter will be concurrently sent to Complainant and Respondent.

I. Complainants are encouraged to report all instances of sexual or interpersonal misconduct regardless of the amount of time that has passed since the alleged misconduct occurred. The University reserves the right to take disciplinary action regarding allegations involving current MSMU Students irrespective of the length of time since the alleged misconduct occurred.

J. Student Conduct Code proceedings are independent from criminal or civil proceedings and will normally proceed without regard to the pendency or potential pendency of criminal or civil proceedings.

## **VI. Reporting Sexual and Interpersonal Misconduct**

Choosing to report sexual or interpersonal misconduct takes bravery and MSMU encourages all Students to report sexual or interpersonal misconduct 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 discuss with you the availability of supportive measures (regardless of whether the Complainant agrees to be interviewed by Campus Security).

If you believe you have experienced sexual or interpersonal misconduct, you are encouraged to file a report with Campus Security (either in person, by phone, 310.954.4123 (Chalon) or 213.477.2502 (Doheny), or through their [online Report Form](#)), the Title IX Coordinator. Students who are unsure whether what they experienced, witnessed or what has been reported to them constitutes sexual or interpersonal misconduct, should contact Campus Security or the Title IX Coordinator and report the incident. Campus Security or the Title IX Coordinator will take appropriate responsive action based on the information provided.

Per MSMU's Good Samaritan Policy, assisting students who report sexual or interpersonal misconduct is of the utmost importance to the University. In order to facilitate reporting, the University will not hold Students responsible for making a report that does not go through the Conduct Process, so long as the report was made in good faith.

## VII. Complainant/Respondent Rights

A. Complainants and Respondents in a sexual or interpersonal misconduct case 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. Complainants and Respondents may select the Advisor of their choice, regardless of family relationship or lack of affiliation to the University (see Section IX for more details);
2. Receive a written notification of available on- and off-campus counseling, health, mental health, victim advocacy, legal assistance, visa and immigration consultation, 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 sexual and interpersonal misconduct cases;
3. Request and receive supportive measures as approved by the Dean of Students in collaboration with the Title IX Coordinator;
4. Make a complaint to Campus Security;
5. File a police report and take legal action separate from and/or in addition to filing a Student Conduct Code complaint seeking disciplinary action;
6. Be informed of the disciplinary finding (responsible or not responsible) in writing;
7. Present material Witnesses to the alleged incident;
8. Appeal rights as outlined in the Student Conduct Code (Section VI(J) );
9. Opportunity to cross examine the opposing party and any Witnesses to determine credibility of information;
10. Refuse any/all of the above. If Complainant refuses to participate in a hearing with cross examination, the University will not proceed with the conduct process unless sufficient evidence exists without the participation of the Student Complainant. If Respondent refuses to participate in a hearing with cross examination, the University will nonetheless proceed with the conduct process and, if supported by the evidence presented, hold the Respondent accountable for proved violations of the subject Student

Conduct Code charges.

## VIII. Conduct Process for SIM

Student charged with violations of the Student-on-Student Sexual or Interpersonal Misconduct Policy and Protocol, and/ or whose alleged misconduct and asserted Code violations may result in severe sanctioning (suspension or dismissal from the University), are accorded a variety of protections.

In instances where severe sanctioning is not a possible disciplinary sanction, students will go through the non-severe sanctioning conduct process. Please review Student Conduct Code Section VI for more information.

1. The electronic notice of misconduct charges shall include in addition to the matters stated above, a scheduled pre-hearing meeting with the Chief Conduct Officer;
2. If a Support Person has been identified, the Support Person will be copied on all communication regarding scheduling of pre-hearing meetings, review of reports and scheduling of the hearing with cross examination;
3. Investigation
4. A pre-hearing meeting at which:
  - a. The Respondent (and separately the Complainant if applicable) may review all the information gathered by the University, including time, date and place where the alleged behavior/misconduct is alleged to have occurred, that makes up the basis for the charge(s);
  - b. The Respondent/Complainant may ask the Chief Conduct Officer questions regarding the conduct process;
  - c. Either the Respondent or the Complainant (if applicable) may provide the names of Witnesses not yet interviewed whose statements may have value to the proceedings. In the event either a Respondent or Complainant provides Witnesses during the pre-hearing meeting, then the names of those Witnesses will be provided to the investigator for formal interview, and the investigation report will be supplemented with their statements. Once the investigation report is updated with any additional Witness interviews and information, both Respondent and Complainant will be permitted another opportunity to review the updated report, evidence and information. If a Witness fails to meet with the investigator for a formal interview, any prior or subsequent statements will not be utilized nor relied upon by the Conduct Hearing Panel in rendering its decision;
  - d. The Chief Conduct Officer shall explain the hearing processes to the parties including cross examination processes and procedures and Student rights and make available the Student Conduct Code.
5. Respondents and Complainants who wish to have the assistance of a Support Person should inform the Chief Conduct Officer in writing at least two business days prior to the scheduled date of the pre hearing meeting. The Support Person's role is to assist Students in understanding the conduct process during pre-hearing meetings and hearings with cross examination. Support Persons may not address the Conduct Hearing Panel or play any other role during hearings. All communication involving Support Persons during hearings must be between the Support Person and Student. A Support Person may not appear in lieu of the Student at either the pre-hearing meeting or the hearing with cross examination;
6. A hearing with cross examination (conducted via videoconferencing) during which the Conduct Hearing Panel shall specify the nature of the alleged misconduct and provide the Respondent and the Complainant 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 present evidence relevant to the alleged misconduct and to respond to the information gathered by the University, including the right to offer counter information and/or call appropriate Witnesses.

The hearing Process will proceed where a Respondent fails to appear after timely notice and a determination of the charged misconduct 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;

7. The Respondent, via videoconferencing, will be permitted the opportunity to provide questions to be asked of the Complainant, and any Witnesses that appear either at the request of the Respondent, the Complainant or the University, in order to assess the credibility of the information offered. The Respondent will be asked to provide their questions in advance of the hearing, and the Conduct Officers on the Hearing Panel will be permitted to disallow a question asked by the Respondent if the Respondent is unable to provide sufficient rationale for the relevancy of the question.

The Complainant, via videoconferencing, will be permitted the opportunity to provide questions to be asked 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. The Complainant will be asked to provide their questions in advance of the hearing, and the Conduct Officers on the Hearing Panel will be permitted to disallow a question asked by the Complainant if the Complainant is unable to provide sufficient rationale for the relevancy of the question;

8. Both the Respondent and the Complainant will be permitted the opportunity to make a closing statement at the conclusion of the evidentiary portion of the hearing;
  - a. If a further hearing is necessary, a supplemental proceeding will be scheduled:
  - b. Respondents, Complainants or the Hearing Panel may submit new and or additional evidence and call appropriate 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;
9. Respondents and Complainants may utilize the assistance of a Support Person during the supplemental hearing;
10. Sanctions shall be levied if it is determined that the Student is responsible for the violation(s). If not, the charge(s) will be dismissed.

Should a Complainant wish to move forward with the conduct process, the Complainant and Respondent will each have separate meetings with a representative from the Office of the Dean of Student Life (OSDL) to discuss the conduct process. Both the Complainant and Respondent will each have separate meetings with Investigators/Conduct Officers to gather evidence and facts related to the complaint. Prior to the hearing, both Complainant and Respondent will be able to review the investigative reports produced by Investigators/Conduct Officers and provide feedback. Each party will have a pre-hearing meeting with the Chief Conduct Officer to review and address the conduct process format. Following these pre-hearing meetings, a hearing with cross-examination will be scheduled in a format utilizing video-conferencing. OSDL makes every effort to adjudicate these matters promptly, usually within 120 days, assuming timely cooperation of all parties.

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.

Students have the right to appeal the decision and/or the sanctions assigned. Please review Student Conduct Code Section VI(J) for more information.

## **IX. Advisor**

In cases of sexual and/or interpersonal misconduct, that are going through the MSMU Student Conduct process, Complainants and Respondents may choose an Advisor of their choice; however, the Advisor must not be serving in any other capacity in the conduct process (i.e., Witness or Conduct Officer). If Complainants or Respondents want a trained Advisor from the University community, they may obtain a referral from their assigned Athenian Resource Coordinators (see section X). Advisors will assist Students in understanding the conduct process but will not serve as representation for Students in Student Conduct Code proceedings.

If the Student chooses an Advisor for incidents involving sexual and/or interpersonal misconduct, that Advisor is still subject to the requirements set forth in Section VI(E2) of the Student Conduct Code.

## **X. Athenian Resource Coordinators**

When an allegation of Title IX Sexual Harassment is brought to the attention of MSMU, the 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 will make themselves available, separately, to assist both the Complainant and Respondent in identifying University and external resources that are available to them in the context of alleged sexual or interpersonal misconduct. ARCs will also review with Complainants what supportive measures may be available to them (as outlined in Section V(C) of this policy). Complainants will be assigned an ARC regardless of whether they provide MSMU with the name of the Respondent or willingly participate in the conduct process. The ARCs are members of the Division of Student Affairs who are trained to assist the parties in identifying University and external resources and explaining the University's conduct process in cases of alleged Student Conduct Code violations relating to sexual and interpersonal misconduct. The role of the ARC is to:

- A. Provide information, in writing, regarding resources on and off campus such as 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, Rape Treatment Center at Santa Monica-UCLA Medical Center, and Peace Over Violence.
- B. Explain all stages of the MSMU Student Conduct Code process, including potential outcomes for both Complainant and Respondent;
- C. Provide information, explanation and review so that the parties can make an informed decision about the options available to them, including reporting to law enforcement, filing and responding to Student Conduct Code complaints, documenting their decisions and requesting supportive measures;
- D. Follow up with the Student throughout the Student Conduct Code 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.

## **XI. Retaliation**

The University will respond to any accusations of Retaliation against the Complainant, Respondent or Witnesses brought upon by the investigation or adjudication of the misconduct. As previously mentioned, Retaliation is prohibited and will not be tolerated by the University. Any person(s) 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.

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 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 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 213.477.2803