

# MUSKINGUM

U N I V E R S I T Y

## GENDER-BASED AND SEXUAL MISCONDUCT Policy and Procedural Manual

**Responsible Office:** Equity, Compliance, and Risk Management

**Responsible Administrator:** Director of Equity, Compliance, and Risk Management

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## **100. GENDER-BASED AND SEXUAL MISCONDUCT POLICY**

Date Issued: 10/14/2017

Date Edited:

### **101. Preamble**

Muskingum University (“the University”) is committed to maintaining a diverse community that respects human dignity through positive action and ethical sensitivity. The University shall foster an atmosphere of mutual respect and appreciation of differences and seeks to maintain an environment free of conduct that unreasonably interferes with the academic and professional experience of any member of the University community. Consistent with this commitment, the University complies with Title IX of the Education Amendments of 1972 (“Title IX”), which prohibits discrimination on the basis of sex in education programs and activities, Title VII of the Civil Rights Act of 1964 (“Title VII”), which prohibits sex discrimination in employment, and relevant laws of the State of Ohio, which prohibit sex discrimination in education and employment. The University also complies with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”), as amended by relevant provisions of the Violence Against Women Reauthorization Act of 2013 (“VAWA”) and the Campus Sexual Violence Elimination Act (the “Campus SaVE Act”).

Gender-based and sexual misconduct on the University's campus or in other settings related to the University's educational or employment activities is a form of sex discrimination that is unlawful, unethical, and prohibited by the University.

Under this Gender-Based and Sexual Misconduct Policy (“Policy”), the University will promptly respond to reports of gender-based and sexual misconduct and, where it is determined that such misconduct has occurred, will take measures to eliminate the conduct, prevent its reoccurrence, and address its effects.

### **102. Scope and Application**

This Policy applies to all acts of gender-based and sexual misconduct, as defined herein, between individuals, regardless of the sex, gender identity, gender expression, and/or sexual orientation.

This Policy replaces and supersedes any existing University policies and procedures regarding sexual harassment, discrimination, and/or assault and applies to all members of the University community. The University community includes, without limitation, faculty, staff, students, organizations, guests, contractors, vendors, and visitors. All members of the University community are expected to cooperate fully in efforts to enforce the Policy; to investigate any matters brought forward under the Policy; to participate in training or education on the Policy as required; and to assist with monitoring and auditing the Policy and related matters as may be requested.

The University shall take such steps as may be necessary to make this Policy accessible to students and employees with disabilities and to make the policy, any reporting forms, information, and training accessible for those with limited English proficiency.

The University shall enforce this Policy when prohibited conduct, as defined herein, occurs on campus, in the context of any University program or activity, which includes University-sponsored study abroad programs or field trips, or in any other location or virtual space, if the conduct has continuing adverse effects on campus or in any University program or activity. The Policy is not intended to inhibit or prohibit educational content or discussions inside or outside of the classroom that include controversial or sensitive subject matters protected by academic freedom, which is defined in the University's Faculty Handbook.

The University may amend or modify the procedures set forth in this Policy at any time if it determines such amendment or modification is warranted under the circumstances.

### **103. Notice of Non-Discrimination**

The University does not discriminate in its educational and employment policies on the basis of race, color, creed, religion, national/ethnic origin, sex, sexual orientation or expression, age, or with regard to the bases outlined in the Veterans Readjustment Act and the Americans with Disabilities Act.

Under Title IX:

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

The University will broadly disseminate its policy of non-discrimination to all members of the University community as appropriate or necessary, including any application forms or recruitment materials distributed to the University community.

### **104. Privacy and Confidentiality**

When disclosing information about Prohibited Conduct to a University employee, all community members should be aware of how their information may be shared within the University based on the University's Title IX obligations, as well as the identity of confidential resources under state law.

The University recognizes that privacy is very important. All actions taken to investigate and resolve reports shall be conducted with as much privacy and discretion as possible without compromising the thoroughness and fairness of the investigation. All persons involved in an investigation are expected to treat the process with respect.

Privacy and confidentiality have distinct meanings under this Policy.

### **105. Definitions**

The Responsible Administrator shall provide adequate information and training regarding the following defined terms.

### **A) Prohibited Conduct**

The University prohibits gender-based and sexual misconduct, which it defines broadly. Under this Policy, Prohibited Conduct includes acts of gender-based or sexual harassment, sexual assault, intimate partner violence, sexual exploitation, stalking, administering a rape drug to another individual, retaliation, obstructing or preventing a person from complying with this Policy or any direction or order issued under it, aiding or facilitating, abetting, inciting, compelling, or coercing the commission of a violation of the Policy.

Attempts, directly or indirectly, to commit any action set forth above will be considered Prohibited Conduct and treated as a violation of this Policy, even if the attempt does not result in a completed act.

Prohibited Conduct also includes the intentional filing of any false report of Prohibited Conduct.

### **B) Gender-Based and Sexual Harassment**

Gender-based and sexual harassment is any unwelcome sexual advance, request for sexual favors, or other verbal or physical conduct of a sexual nature when one of the following conditions are present:

- 1) submission to or rejection of the conduct is made either explicitly or implicitly a term or condition of an individual's employment, evaluation of academic work, participation or enrollment (quid pro quo);
- 2) submission to or rejection of the conduct is used as a basis for employment or educational decisions, placement services, or evaluation of academic achievement (quid pro quo); or
- 3) the conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with an individual's work or educational performance or denies or limits the individual's ability to participate or benefit from the University's employment or educational programs and/or activities by creating an intimidating, hostile, or offensive working, academic, or social environment under both a subjective and an objective perspective (hostile environment).

### **C) Sexual Assault**

Sexual Assault includes both Non-Consensual Sexual Contact and Non-Consensual Sexual Penetration.

Non-Consensual Sexual Contact is any intentional sexual touching, however slight, with any object or body part, by a person upon another person that is without consent. Sexual contact includes intentional contact with the breasts, buttocks, groin, or genitals, or touching another with any of these body parts, making another touch you

or themselves with or on any of these body parts, or making you touch yourself; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals or other orifice, or disrobing of another person without consent.

Non-Consensual Sexual Penetration is having or attempting sexual penetration with another individual without consent. Sexual penetration includes oral-genital contact, or vaginal or anal penetration by a penis, tongue, finger, or other object, no matter how slight the penetration.

#### **D) Consent**

Consent to sexual activity, which includes sexual contact, sexual penetration, or both, must be clear, unambiguous, mutual, and voluntary for each participant and for each specific sexual act throughout any sexual encounter. Consent must be expressed affirmatively, either by a verbal statement or through mutually understandable conduct that plainly manifests affirmative consent.

**In the State of Ohio, consent can never be given by minors under the age of 16 to persons over the age of 17.** This Policy does not address all aspects of minor-to-minor sexual activity.

#### **E) Intimate Partner Violence**

Intimate partner violence is violence committed by a person who is or has been in a social relationship of a romantic, intimate, domestic partner, spousal, sexual, or dating nature with the person subject to the violence. Intimate partner violence is also referred to as dating violence, domestic violence, or relationship violence. Intimate partner violence includes behavior or physical force that intimidates, manipulates, isolates, frightens, terrorizes, coerces, threatens, hurts, injures, or wounds an intimate partner.

#### **F) Sexual Exploitation**

Sexual exploitation is taking or attempting to take sexual advantage of another without consent for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any other non-legitimate purpose.

#### **G) Stalking**

Stalking is a course of conduct involving more than one instance of unwelcome attention, harassment, physical or verbal contact, or any other course of conduct directed at a specific person, that could be reasonably regarded as likely to alarm or place the person in fear of bodily injury, or reasonably cause substantial emotional distress to the person. Stalking may include cyber-stalking, in which electronic media such as the internet, cell phones, texts, apps, social media, blogs, personal websites,

or other forms of electronic contact are used to make unwelcome contact with another person.

#### **H) Retaliation**

Taking or attempting adverse action against a person or group because that person or group participated in a good faith report or investigation under this Policy, whether as a complainant, respondent, witness, administrator, or in any other role. Retaliation can be committed by any individual or group of individuals, not just the respondent or complainant. Retaliation can take many forms, including threats, intimidation, bullying, harassment, physical harm, emotional abuse, damage to or theft of property, and exclusion from a position, association, or event, among others.

#### **I) Complainant**

The person who reports that they have been subject to Prohibited Conduct or is the subject of such a report.

#### **J) Respondent**

The person against whom a report of Prohibited Conduct is brought.

#### **K) Reporter**

A person who reports an incident of Prohibited Conduct but who is not a subject of the report.

#### **L) Privacy**

Privacy generally means that information related to a report will only be shared with those University employees with a legitimate educational interest or with external individuals or entities only as permitted under University policy and applicable law. Members of the University community involved in reviewing a reported violation of this Policy are expected to fulfill their obligation to share information only on a need-to-know basis to fulfill the responsibilities of their position. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process.

The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act ("FERPA"). The privacy of an individual's medical and related records generally is protected by the Health Insurance Portability and Accountability Act ("HIPAA").

## **M) Confidentiality**

Confidentiality means that information shared with campus or community professionals who have legal confidentiality will only be disclosed:

- with the individual's expressed written permission;
- where there is a continuing threat of serious harm to the patient/client or to others;
- where there is suspected abuse or neglect of a minor; or
- as required by state law.

### **106. Relationships by Persons in Authority**

Romantic, intimate, or sexual relationships between faculty and staff (who are not student employees) and students are prohibited. When such relationships exist between employees, the University will take action to ensure that neither employee is in a position of supervisory or evaluative authority over the other employee. The Consensual, Romantic, or Sexual Relationships Policy governs such relationships and may be found in the Employee Handbook.

### **107. Administration of this Policy**

The Responsible Administrator has been designated as the University's Title IX Coordinator. The Title IX Coordinator will develop, modify, and implement written procedures to respond to reports of violations of this Policy in compliance with all applicable federal and state laws, including regulatory guidance.

The University will appropriately train the Title IX Coordinator in all areas over which the Title IX Coordinator has responsibility.

The University will ensure that the Title IX Coordinator possesses comprehensive knowledge in all areas of the Title IX Coordinator's responsibilities and has adequate resources so that the Title IX Coordinator is able to effectively carry out those responsibilities.

University officials may not interfere with the Title IX Coordinator's participation in complaint investigations and monitoring of the University's efforts to comply with and carry out its responsibilities under Title IX and other applicable law.

The position of Title IX Coordinator shall remain filled at all times. In the event that the Responsible Administrator is unavailable or unable to fulfill the obligations of Title IX Coordinator, an interim Title IX Coordinator shall be designated by the University until a Responsible Administrator is identified.

The Title IX Coordinator shall require any determinations of responsibility to be made based on the preponderance of the evidence. Written procedures shall be made available with this Policy.



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**110. THE TITLE IX COORDINATOR**

Date Issued: October 14, 2017

Date Edited:

**111. Contact Information**

Concerns about the University's application of Title IX may be directed to either the:

**Director of Equity, Compliance, and Risk Management**

Holly L. Gleason  
Muskingum University  
163 Stormont Street, Montgomery Hall  
New Concord, OH 43762  
Telephone: (740) 826-8116  
Facsimile: (740) 826-6131  
Email: [titleix@muskingum.edu](mailto:titleix@muskingum.edu)

or the

**U.S. Department of Education Office for Civil Rights**

Cleveland Office  
1350 Euclid Avenue, Suite 325  
Cleveland, OH 44115  
Telephone: (216) 522-4970  
Facsimile: (216) 522-2573  
Email: [OCR.Cleveland@ed.gov](mailto:OCR.Cleveland@ed.gov)

**112. Deputy Title IX Coordinators**

The Title IX Coordinator may designate one or more Deputy Title IX Coordinators, who shall report to the Title IX Coordinator and who shall have such responsibilities as the University may establish. However, at all times, the Title IX Coordinator shall have the overall responsibility for ensuring that the University meets its Title IX obligations.

**113. Records**

The Title IX Coordinator will maintain adequate records regarding any reports received, regardless of how the report may be resolved. Files will include information regarding interim interventions, investigative steps, and information gathered during an investigation. Records of withdrawn reports shall be maintained in the event that independent evidence is revealed to justify an investigation.

Any audio-recordings made by the University during a hearing and any documents or other evidence presented at the hearing will serve as the record of the hearing proceedings and will be maintained by the Title IX Coordinator as part of the respondent's conduct record for as long as the conduct record is maintained. Notes and records of the proceedings will be disposed of two years after the appeal period has expired.

## 114. Training, Prevention, and Awareness Programs

### A) Training for the University community

The University provides training to students and employees to ensure they understand the Policy, these Procedures, and the topics and issues related to maintaining an education and employment environment free from harassment and discrimination.

The University is committed to the prevention of Prohibited Conduct through regular and ongoing education and awareness programs. Incoming students and new employees receive primary prevention and awareness programming as part of their orientation, and returning students and current employees receive ongoing training and related education. All athletic administrators, coaches, student athletes, and athletic staff will receive training as required by NCAA policy.

Specifically, the University's sexual violence and prevention program will:

- (1) Clearly identify the resources, both on and off campus, who can provide resources such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance.
- (2) Provide all incoming students and new employees with:
  - a statement that the University prohibits the offenses of domestic violence, dating violence, sexual assault, and stalking;
  - the definition of domestic violence, dating violence, sexual assault, and stalking in the State of Ohio;
  - the definition of consent, in reference to sexual activity, in the State of Ohio;
  - safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of domestic violence, dating violence, sexual assault, or stalking against a person other than such individual;
  - information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks; and
  - the information described in 20 U.S.C. 1092(f)(8)(B) (ii) through (vii).
- (3) Provide all students and employees with ongoing prevention and awareness campaigns, which includes:
  - a statement that the University prohibits the offenses of domestic violence, dating violence, sexual assault, and stalking;
  - the definition of domestic violence, dating violence, sexual assault, and stalking in the State of Ohio;
  - the definition of consent, in reference to sexual activity, in the State of Ohio;

- safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of domestic violence, dating violence, sexual assault, or stalking against a person other than such individual;
- information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks; and
- the information described in 20 U.S.C. 1092(f)(8)(B) (ii) through (vii).

### **B) Title IX Coordinator, Deputy Title IX Coordinators, Investigators, and Hearing Board Members**

The Title IX Coordinator, Deputy Title IX Coordinator, Investigators, and Hearing Board Members will receive annual training regarding issues relating to gender-based and sexual misconduct, including specific instruction on their areas of responsibility and the University's policies and procedures.

### **C) Responsible Employees**

In addition to the training specified in Procedure 140(A), Responsible Employees will be trained regarding their obligations as Responsible Employees.

The Title IX Coordinator should be consulted regarding any training or educational opportunities either sought by or offered to any member of the University community.

## **120. RECOGNIZING PROHIBITED CONDUCT**

Date Issued: October 14, 2017

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All terms included herein are defined in the Policy. The following information provides guidance for evaluating whether conduct may violate the Policy.

## **121. Gender-Based and Sexual Harassment**

Gender-based and sexual harassment includes acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex, gender identity, gender expression, or sex- stereotyping, even if those acts do not involve conduct of a sexual nature when one of the above conditions, *quid pro quo* or *hostile environment*, are present. Gender-based and sexual harassment can take many forms and does not have to be "directed" at a particular individual.

Conduct reported as gender-based and sexual harassment will be evaluated by considering the totality of the circumstances, including the nature, frequency, intensity, location, context, and duration of the questioned behavior. Although repeated incidents generally create a stronger claim of gender-based and sexual harassment, a single incident, even if isolated, can create a hostile environment if sufficiently serious. In general, the more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. In addition,

conduct that was initially welcomed may develop into a form of gender-based and sexual harassment depending on the circumstances.

Examples of conduct that *may* constitute sexual harassment depending on the totality of the circumstances include, but are not limited to, the following:

- unwelcome sexual advances - whether they involve physical touching or not;
- threats or insinuations that a person's employment, wages, academic grade, promotional opportunities, classroom work assignments, or other conditions of employment or academic life may be adversely affected by not submitting to sexual advances;
- dissemination of sexually explicit voicemail, email, graphics, downloaded material, or websites;
- unwelcome sexual epithets, sexual jokes, written or oral references to sexual conduct, or references to one's own sex life;
- unwelcome comments about an individual's sexual activity;
- displaying sexually suggestive objects, pictures, or cartoons;
- unwelcome leering, sexual behavior, or sexual gestures;
- unwelcome inquiries into another's sexual experiences;
- unwelcome discussion of one's sexual activities;
- engaging in harassing conduct related to another's sex, gender identity, gender expression, or sexual orientation that affects the workplace, or the educational environment, or affects others' ability to compete for grades, research opportunities, academic or work assignments, compensation, and/or employment benefits;
- direct or implied requests by a supervisor, faculty member, staff member, athletic coach or trainer, or other individual responsible for work or academic evaluations for sexual favors in exchange for actual or promised job or academic benefits. Actual or promised benefits may relate to grades, academic assignments, research opportunities, favorable reviews and recommendations, salary increases, promotions, increased benefits, continued employment or enrollment, or any other benefit; or
- bullying or cyber-bullying based on sex or gender, gender identity, gender expression or sexual orientation.

## **122. Consent**

### **A) Obtaining Consent**

Consent cannot be inferred from the absence of a "no." Silence, passivity, or lack of active resistance does not imply consent. Consent to some types of sexual activity does not imply consent to others, nor does past consent to a given act imply ongoing or future consent. Consent is not to be inferred from an existing or previous dating or sexual relationship. Even in the context of a relationship, there must be mutual

consent to engage in sexual activity. Consent to engage in sexual activity with one person is not consent to engage in sexual activity with any other person.

- 1) Force is the use or threat of physical violence or intimidation to overcome an individual's freedom of will to choose whether or not to participate in sexual activity. There is no requirement that a party resist the sexual advance or request, but resistance will be viewed as a clear demonstration of non-consent.
- 2) Coercion is the use of unreasonable pressure to compel another individual to engage in or continue sexual activity against an individual's will. Coercing someone into sexual activity violates the Policy in the same way as forcing an individual into sexual activity.

Coercion can include a wide range of behaviors, including intimidation, manipulation, threats and blackmail. Examples of coercion include, but are not limited, threatening to "out" someone based on sexual orientation, gender identity, or gender expression and threatening to harm oneself if the other party does not engage in the sexual activity.

## **B) Withdrawing Consent**

Consent can be withdrawn at any time through clear words or mutually understandable actions. Once consent is withdrawn, the sexual activity must stop immediately, and all parties must obtain mutually expressed or clearly stated consent before continuing with further sexual activity.

## **C) Incapacitation**

A person who is incapacitated cannot consent to sexual activity. A person is incapacitated if they are asleep, unconscious, intermittently conscious, unaware that sexual activity is occurring, or lack the physical and/or mental ability to make informed, rational judgments about whether or not to engage in sexual activity.

A person may be incapacitated as a result of consuming alcohol, rape drugs, or other drugs or as a result of a temporary or permanent physical or mental health condition.

Where consumption of alcohol, rape drugs, or other drugs is involved, incapacitation is a state beyond intoxication, inebriation, impairment in judgment, or "drunkenness." Because the impact of alcohol, rape drugs, or other drugs varies from person to person, evaluating whether an individual is incapacitated, and therefore unable to give consent, requires an assessment of whether the consumption of alcohol, rape drug, or other drug has rendered the individual physically or mentally incapable of:

- making decisions about the potential consequences of sexual contact;
- appraising the nature of one's own conduct;

- communicating consent to sexual contact; or
- communicating unwillingness to engage in sexual contact.

Consent cannot be gained by taking advantage of the incapacitation of another person, where the person initiating sexual activity knew or reasonably should have known that the other was incapacitated. A person who engages in sexual activity with someone the individual knows or reasonably should know is incapable of making a rational, reasonable decision about whether to engage in sexual activity is in violation of the Policy.

#### **D) Impairment**

No matter the level of an individual's impairment, if that individual has not agreed to engage in sexual activity, there is no consent. Where an individual's level of impairment does not rise to incapacitation, it is still necessary to evaluate the impact of intoxication on consent. In evaluating whether consent was sought or given, the following factors may be relevant:

- impairment may impact one's ability to give consent and may lead to incapacitation;
- a person's level of impairment is not always demonstrated by objective signs; however, some signs of impairment may include slurred or incomprehensible speech, unsteady gait, difficulty walking or clumsiness, combativeness, emotional volatility, vomiting, incontinence, poor judgment, or difficulty concentrating; and
- an individual's level of impairment may change over a period of time based on a variety of subjective factors, including the amount of substance intake, speed of intake, body mass, and metabolism.

#### **E) Respondent's Impairment**

When a report of Prohibited Conduct is investigated, the respondent's knowledge will be viewed from the perspective of a sober, reasonable person under the same circumstances. The respondent's intoxication does not diminish the responsibility to obtain valid consent.

### **123. Sexual Exploitation**

Examples of sexual exploitation include, but are not limited to:

- prostituting another person;
- non-consensual taking of pictures, video recordings, and/or audio recordings of sexual activity;
- non-consensual distribution of pictures, video recording, audio recording, or live-streaming of sexual activity;
- allowing third parties to observe sexual activity without consent;

- engaging in voyeurism (watching private sexual activity without the consent of the participants or viewing another person's intimate parts (including genitalia, groin, breasts, or buttocks) in a place where that person would have a reasonable expectation of privacy);
- exposing one's genitals in non-consensual circumstances;
- inducing another to expose their genitals under non-consensual circumstances; or
- causing the incapacitation of another for the purpose of compromising that person's ability to consent to sexual activity.

#### **124. Intimate Partner Violence**

In determining the existence of a romantic, intimate, domestic partner, spousal, sexual, or dating relationship, factors such as the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship will be considered.

Intimate partner violence does not require sexual activity between partners, but non-consensual sexual activity or unwelcome conduct, including the specific forms of Prohibited Conduct under the Policy, may constitute forms of intimate partner violence.

#### **130. *REPORTING PROHIBITED CONDUCT***

Date Created: October 14, 2017  
Date Edited:

#### **131. Who Should Report**

Any individual may make a report under the Policy, and all individuals are encouraged to do so. Reporting Prohibited Conduct ensures that the report will be brought to the attention of appropriate administrators for response, which may include an investigation.

#### **132. Timeline for Reporting**

Regardless of when or where the incident occurred, individuals are encouraged to report Prohibited Conduct and to seek any necessary help from campus or community resources.

Individuals are encouraged to report Prohibited Conduct immediately in order to maximize the University's ability to respond promptly and equitably. Although prompt reporting helps the investigation process, the University does not limit the timeframe for reporting. The University cannot pursue disciplinary action against an individual who is no longer affiliated with the University. However, under those circumstances, the University will help an individual identify external reporting options, provide reasonably available support and resources, and take other steps designed to eliminate the prohibited conduct, prevent recurrence of the prohibited conduct, and address its effects.

### **133. Emergency/Urgent Matters**

The first priority for any individual should be personal safety and well-being. The University encourages all individuals to make a prompt report to law enforcement and/or seek immediate medical treatment in response to an incident in order to address immediate safety concerns, preserve evidence, and initiate an immediate investigative response. The University will help any individual get to a safe place and will provide transportation to the hospital, coordination with law enforcement, and information about the University's resources and complaint processes.

### **134. Bystander Intervention**

The University expects all of its community members to take reasonable and prudent actions to prevent or stop an act of Prohibited Conduct. Taking action may include direct intervention, calling law enforcement, or seeking assistance from a person in authority. Community members who choose to exercise this positive moral obligation will be supported by the University.

### **135. Amnesty for Reporting**

The University encourages reporting incidents of Prohibited Conduct and seeks to remove any barriers to reporting by making the reporting process transparent and straightforward. The University recognizes that Muskingum students who have been drinking or using drugs at the time of the incident may be hesitant to report Prohibited Conduct because of potential consequences for their own alcohol or drug violations of the Code of Student Conduct. Students who report Prohibited Conduct, either as a complainant or a reporter, will not be subject to disciplinary action by the University for their own consumption of alcohol or drugs at or near the time of the incident, provided that any such consumption did not and does not place the health or safety of any person at risk. The University may, nevertheless, initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs. The amnesty policy applies only to the University's Code of Student Conduct process.

### **136. Where/How to Report**

Individuals should consider to whom and how they wish to make a report of Prohibited Conduct, as each of the following groups of people have different obligations upon receiving a report.

#### **A) Title IX Coordinator/Deputy Title IX Coordinators**

All members of the University community are encouraged to report incidents of Prohibited Conduct directly to the Title IX Coordinator. Vendors, contractors, guests, and visitors should report to the Title IX Coordinator.

Director of Equity, Compliance, and Risk Management  
Holly L. Gleason  
Muskingum University  
163 Stormont Street, Montgomery Hall 16B  
New Concord, OH 43762



(740) 826-8116  
[titleix@muskingum.edu](mailto:titleix@muskingum.edu)

As an alternative to reporting incidents of Prohibited Conduct to the Title IX Coordinator, several Deputy Title IX Coordinators have been designated to receive reports of Prohibited Conduct. Although each Deputy Title IX Coordinator has unique knowledge and experience working with a particular segment of the University community, reports may be made to any Deputy Title IX Coordinator.

Individuals who choose to report information to the Title IX Coordinator or a Deputy Title IX Coordinator will receive immediate assistance from that person. Each Deputy Title IX Coordinator will refer the report to the Title IX Coordinator as part of the University's commitment to consistent, sensitive, trauma-informed, and Title IX-compliant responses.

Allegations that the Title IX Coordinator has engaged in Prohibited Conduct should be reported to the Vice President of Finance and Operations.

## **B) Law Enforcement**

Reporting incidents of Prohibited Conduct may help protect others from future victimization, apprehend the alleged assailant, and maintain options regarding criminal prosecution. Members of the University community are encouraged to pursue criminal action for incidents of Prohibited Conduct when the incident may also constitute a crime under the laws of the jurisdiction where the incident occurred. The Ohio Revised Code (R.C. 2921.22) requires anyone with knowledge that a felony is being or has been committed to report the information to law enforcement authorities.

Reports of incidents should be made to the law enforcement agency with jurisdiction where the incident occurred. If the incident occurred off-campus, the University's Police Department ("Campus Police") and/or the Title IX Coordinator can help identify the appropriate law enforcement agency. When an individual reports an incident to Campus Police, a campus police officer will take a statement regarding what happened and/or refer the matter to the local law enforcement agency with jurisdiction, such as the Muskingum County Sheriff's Office.

Reports may be made to Campus Police 24 hours per day, seven days per week:

Campus Police  
Muskingum University  
104 Montgomery Boulevard  
New Concord, OH 43762  
(740) 826-8155  
(740) 826-6110 (fax)

Under Ohio law, the reporting individual may request that their identity be kept confidential in law enforcement records; however, because Campus Police are employees of the University, information about the report, including personally identifiable information, will be shared with the Title IX Coordinator. Filing a police

report does not obligate the complainant or reporter to participate in criminal or campus proceedings.

To the extent permitted by law, the University will assist a reporting University community member with making a report to law enforcement and will cooperate with law enforcement agencies if the complainant decides to pursue law enforcement action.

A reporter or complainant may seek resolution through the University's complaint process, may pursue criminal action, may choose one but not the other, or may choose both. Proceedings under the Policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off-campus. Cooperation with law enforcement agencies may require the University to temporarily suspend its own investigation while the law enforcement agency gathers evidence. The University will promptly resume its own investigation as soon as it is notified that the law enforcement agency has completed its evidence gathering process.

The University's definition of Prohibited Conduct, and its process and standard of proof in the Title IX investigation and hearing process differ from those used in criminal prosecutions. Accordingly, law enforcement's determination whether to prosecute an individual alleged to have engaged in Prohibited Conduct does not determine whether the University will follow its administrative procedure, including investigation and hearing. However, the University may take into consideration any criminal disposition or any information shared by law enforcement in the investigation and resolution of the report of Prohibited Conduct.

In the event the University enters into a memorandum of understanding ("MOU") with any local law enforcement agency ("LLEA") to address issues arising in connection with the investigation of matters arising under the Policy, the MOU must require the LLEA to comply with the Family Educational Right to Privacy Act ("FERPA"). Further, the MOU must permit the University to meet its obligations under Title IX and the Policy.

### **C) Responsible Employees**

**All faculty, coaches, staff, and resident assistants who have a responsibility for student welfare are considered Responsible Employees and are required to promptly report any acts of Prohibited Conduct of which they become aware to the Title IX Coordinator.**

Responsible Employees must report information that has been disclosed by a complainant or reporter, conduct that the Responsible Employee has observed, or other information that could reasonably raise a concern that Prohibited Conduct may have occurred. Information known to a responsible employee is considered private, but not confidential. Therefore, all known information, including the names of the parties and any details of the alleged Prohibited Conduct must be shared promptly with the Title IX Coordinator.

Before an individual reveals information that the individual wishes to keep confidential, a Responsible Employee shall make an effort to ensure that the individual understands:

- 1) the Responsible Employee's obligation to report the names of the person subjected to Prohibited Conduct and the person alleged to have violated the Policy, as well as relevant facts regarding the alleged incident to the Title IX Coordinator or other appropriate University officials;
- 2) the individual's option to request confidentiality, which the school will consider; and
- 3) the individual's ability to share the information confidentially with counseling, advocacy, health, mental health, or sexual assault-related services.

Responsible Employees shall contact the Title IX Coordinator, who will provide information regarding victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance. Responsible Employees, who are not identified as the Title IX Coordinator, a Deputy Title IX Coordinator, or a confidential resource, may not be able to provide additional resources or immediate support.

Questions about employee reporting responsibilities or the University's potential responses to a report may be directed to the University's Title IX Coordinator. The Title IX Coordinator shall take steps to ensure that the University's policy with regard to confidentiality under the Policy is widely disseminated on campus.

Failure to inform the University's Title IX Coordinator of any reports may result in disciplinary action up to and including termination of the Responsible Employee.

#### **D) Confidential Resources**

For members of the University community who do not want details of their report of Prohibited Conduct to be shared with the Title IX Coordinator, the University offers on-campus mental health counselors, campus health service providers, and the University Chaplain as Confidential Resources. For employees of the University, the Employee Assistance Program serves as a confidential resource. Confidential Resources are subject to separate, professional confidentiality obligations that generally prohibit release of information without an individual's express consent, unless otherwise required by law.

If a person discloses Prohibited Conduct to a Confidential Resource, that Confidential Resource will not disclose to University officials any identifying information about the person subject to the misconduct or the person alleged to have committed the misconduct. The Confidential Resource is encouraged, but not required, to provide the Title IX Coordinator with limited non-identifying information about the incident to permit the University to determine if the incident should be reported among the crime statistics the University is required to report under federal or state laws.

Ordinarily, reports made to a University Confidential Resource will not be shared with law enforcement or any state agency. However, there are limited exceptions to a Confidential Resource's legal ability to keep a report of Prohibited Conduct confidential. For example, Ohio law requires medical personnel and clergy to report abuse of minors (under the age of 18) (R.C. 2151.011, et seq.; 2921.14; 2151.421). Further, if someone discloses to a Confidential Resource information suggesting that they or someone else presents an imminent threat or danger to harm themselves or others, confidentiality cannot be maintained.

Additionally, the Ohio Revised Code (R.C. 2921.22) requires anyone with knowledge that a felony has been or is being committed to report the information to law enforcement authorities. Certain medical personnel, counsellors, clergy, and attorneys are exempt from the requirement to make such reports (R.C. 2921.22(G)), but typically, the hospital will report to the state and the police in the town where a rape or sexual assault occurred any data or information concerning cases of rape where the survivor seeks medical treatment. See Procedure 136(B) for more information on reporting to law enforcement.

Counseling Center  
Muskingum University  
163 Stormont Avenue  
Montgomery Hall, Ground Floor, Suite 2  
(740) 826-8091 or (740) 826-8142  
Email: [counseling@muskingum.edu](mailto:counseling@muskingum.edu)

Will Mullins  
Muskingum University Chaplain  
Brown Chapel  
(740) 826-8120  
Email: [wmullins@muskingum.edu](mailto:wmullins@muskingum.edu)

Wellness Center  
(740) 826-8150  
Sarah Fracker: [sfracker@muskingum.edu](mailto:sfracker@muskingum.edu)  
Sarah Young-Dickson: [sdickson@muskingum.edu](mailto:sdickson@muskingum.edu)

Employee Assistance Program  
[www.lifebalance.net](http://www.lifebalance.net) (user ID and password: lifebalance)  
1-800-854-1446  
TTY/TDD 1-800-999-3004

## **E) Off-Campus Resources and Support**

Off-campus organizations can provide resources in response to a report of Prohibited Conduct, including counseling, crisis intervention, and medical services. A list of off-campus resources is included on the University's website. Off-campus resources may not have an obligation to report any information regarding the report to the Title IX Coordinator.

## **F) Online Reporting Option**

Individuals may submit a written report using the Conduct Reporting Form. When completing the form, the nature of the report should be "Concerning or threatening behavior." Written reports may be submitted anonymously, but doing so may limit the University's ability to adequately respond to the report. Written reports should include as much information as possible. The Title IX Coordinator will follow-up with all submitted reports.

### **140. RESPONDING TO REPORTS OF PROHIBITED CONDUCT**

Date created: October 14, 2017

Date edited:

The University will respond to reports of Prohibited Conduct in a prompt, fair, and impartial manner. The University will also seek to balance trauma-informed practices with considerations for fair procedures.

In general, the Title IX Coordinator will conduct an initial assessment. Based on the initial assessment, the Title IX Coordinator may impose interim interventions, seek a voluntary resolution between the parties, and/or forward the report for investigation. Each resolution process is guided by the same principles of fairness and respect for all parties.

The University will work closely with complainants and respondents to ensure their ability to complete their academic program or professional responsibilities during the review of a reported violation of the Policy. If a complainant or respondent has a disability that requires accommodation in order to fully participate in any part of the process, an accommodation may be requested by contacting the Disabilities Education Office.

### **141. Initial Assessment**

Upon receipt of a report of Prohibited Conduct, the Title IX Coordinator will review the report and conduct an initial assessment of the reported conduct, the safety and emotional well-being of the complainant, the complainant's expressed preference for resolution, and the necessity for any interim interventions to protect the safety of the University community. This will typically involve a preliminary meeting between the complainant or reporter and the Title IX Coordinator. The Title IX Coordinator may also consult with other University administrators, including the Dean of Students, Campus Police, the Department of Human Resources, and the Provost's Office. As part of the initial assessment, the University will:

- assess the nature and circumstances of the reported conduct;
- address immediate physical safety and emotional well-being;
- discuss the complainant's expressed preference for manner of resolution and any barriers to proceeding;
- notify the complainant of the right to contact or decline to contact law enforcement if the conduct is criminal in nature, and if requested, assist with notifying law enforcement;

- notify the complainant of the availability of medical treatment to address physical and mental health concerns and to preserve evidence;
- notify the complainant of the importance of preservation of evidence;
- evaluate required actions under the Clery Act, including entering the report into the University's daily crime log if required and issuing a timely warning as appropriate;
- provide the complainant with information about on- and off-campus resources;
- notify the complainant of the range of reasonably available interim interventions;
- provide the complainant with an explanation of the procedural options, including voluntary resolution and disciplinary action (through an investigation and hearing);
- inform the complainant of the right to have an advisor of their choosing to assist them throughout the investigation and resolution of the complaint, including accompanying the complainant to any meeting or proceeding under the Policy;
- assess for pattern evidence or other similar conduct by the respondent; and/or
- explain the University's policy prohibiting retaliation.

The initial review will proceed to the point where a reasonable assessment of the safety of the individual and of the campus community can be made, and the Title IX Coordinator has sufficient information to determine the best course of action. If the Title IX Coordinator determines that additional information is required to make this determination, the Title IX Coordinator will direct the gathering of the additional information. If the Title IX Coordinator decides that an investigation is warranted, the University will proceed as described in the Investigation section below.

#### **142. Request for Anonymity or Not to Proceed**

If the complainant requests anonymity or asks that the report of Prohibited Conduct not be pursued, the University will, before taking any further investigative steps, forward that information, along with all available information about the report, to the Title IX Coordinator who will decide whether the University must proceed with an investigation.

In making such a determination, the Title IX Coordinator must balance the University's commitments to supporting victim/survivor-centered practices with its equally strong commitment to providing a fair and impartial process to the respondent and promoting a safe University community. The Title IX Coordinator will review the totality of the known circumstances and consider the following factors:

- the wishes of the complainant;
- the risk that declining to investigate might jeopardize the safety of the complainant or other members of the University community;
- the University's responsibility to provide a safe and nondiscriminatory environment for all University community members;
- the available facts and circumstances and context of the report;
- the impact on the complainant's emotional well-being or safety by proceeding (or not proceeding) with an investigation;

- whether the respondent has prior arrests, is the subject of prior reports and/or complaints related to any form of Prohibited Conduct, or has any history of violent behavior;
- whether the respondent has a history of failing to comply with any University no-contact directive, other University interim interventions or similar impositions, and/or any civil protective order;
- whether the respondent has threatened to commit violence or any form of Prohibited Conduct;
- whether the Prohibited Conduct involved multiple respondents;
- whether the Prohibited Conduct involved physical violence;
- whether the report reveals a pattern of Prohibited Conduct by the respondent, by a particular group or organization, around a particular recurring event or activity, or at a particular location;
- whether the Prohibited Conduct was facilitated through the use of "date-rape" or similar drugs or intoxicants;
- whether the Prohibited Conduct involved the use of a weapon;
- whether the Prohibited Conduct occurred while the complainant was unconscious, physically helpless or unaware that the Prohibited Conduct was occurring;
- the respective ages and roles of the complainant and respondent, including whether the complainant is (or was at the time of the Prohibited Conduct) a minor (under 18);
- whether any other aggravating circumstances or signs of predatory behavior are present;
- whether the University possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence); and
- the right of the respondent to receive notice and an opportunity to meaningfully respond to relevant information before disciplinary action is sought.

The University will seek to respect the request of the complainant, and where it cannot do so, it will consult with the complainant and keep the complainant informed about the chosen course of action. The University will not compel the complainant to participate in an investigation where the complainant has requested that the University not pursue the investigation. In all cases, the final decision on whether, how, and to what extent the University will maintain the complainant's confidentiality or conduct an investigation, and whether other measures will be taken in connection with a report of a violation of the Policy, rests with the Title IX Coordinator.

The University's ability to investigate and pursue disciplinary action may be limited when the identity of the respondent is unknown or when a complainant requests that their identity not be revealed to the respondent.

#### **143. Timeline for Resolution**

Upon receipt of a report, the University will its best efforts to complete the process in a timely manner by balancing principles of thoroughness and fairness with promptness. Voluntary resolutions, reports resolved following an acceptance of responsibility, investigations, and the hearing process will be completed within a reasonable time.

In general, any timeframe may be extended for good cause, with notice to the complainant and respondent of the delay and the reason for the delay. Good cause may exist if additional time is necessary to ensure the integrity and completeness of the investigation, to comply with a request by law enforcement for temporary delay to gather evidence for a criminal investigation, to accommodate the availability of witnesses, to account for University breaks, vacations, or emergency closings, to account for the complexities of a case, including the number of witnesses and volume of information provided by the parties, or for other legitimate reasons. The Title IX Coordinator will notify the parties in writing of any extension of this timeframe and the reason for such extension.

#### **144. Interim Interventions**

Upon receipt of a report of Prohibited Conduct, the University will implement interim interventions, as may be reasonable and appropriate for the individuals involved and for the University community. The University will determine the necessity and scope of any interim interventions based on the individualized needs of the parties. Interim interventions and campus resources are always available to support a complainant regardless of the course of action chosen or the complainant's level of participation in University proceedings.

When implementing interim interventions, consistent with available information to support the reasonableness of the request, the University will seek to minimize the burden on the individuals seeking the intervention. The Title IX Coordinator will collaborate with the Dean of Students and/or the Human Resources Manager in imposing and coordinating interim interventions, which may be kept in place until the end of any investigation and/or until further notice from the University.

Even when a complainant or respondent does not specifically request an interim intervention, the University may choose to implement such an intervention at its discretion to ensure the safety of any individual or the University community. Interim interventions may be modified by the University as circumstances change or new information is available.

The University offers a range of interim interventions, including, but not limited to:

- letters instructing the parties not to contact each other;
- separation of or modification to academic, employment, extra-curricular, and/or living situations;
- academic accommodations or modifications, including access to tutoring, rescheduling of exams or assignments, and the ability to drop a course without penalty;
- assistance setting up initial appointments for counseling and/or medical services;
- providing an escort;



- assistance in evaluating implications for financial aid, immigration or visa status;
- assistance in obtaining a civil order of protection; and
- other interventions tailored to the involved parties.

In addition to the interim interventions described above, where the report of Prohibited Conduct poses an ongoing risk of harm to the safety or well-being of an individual or the University community, the University may place an individual or organization on interim suspension or impose leave for an employee. Pending resolution of the complaint, the individual or organization may be denied access to campus. When an interim suspension or leave is imposed, the University will make reasonable efforts to complete the investigation and resolution within an expedited time frame.

The University will maintain the privacy of any remedial and protective measures provided under the Policy to the extent practicable. Documentation of interim interventions shall be maintained in the Title IX Coordinator's records.

All individuals are encouraged to report concerns about the failure of another individual to abide by any interim intervention. The University will take prompt and responsive action to enforce interim interventions. Interim interventions cannot be appealed.

#### **145. Voluntary Resolution**

The University recognizes that voluntary resolution options may, if implemented consistently with institutional values and legal obligations, be an appropriate means of addressing Prohibited Conduct reported under the Policy. Voluntary resolution options are designed to eliminate the conduct at issue, prevent its recurrence, and remedy its effects in a manner that meets the expressed preference of the complainant and the safety and welfare of the campus community.

In some forms of voluntary resolution, the remedies imposed will focus on supporting the complainant with no participation or involvement by the respondent. Depending on the type of action taken under voluntary resolution, it may be possible for a complainant to maintain anonymity. In other forms of voluntary resolution, the respondent may agree to participate. Voluntary resolution typically does not involve sanctions imposed against a respondent, unless agreed upon by all parties.

Voluntary resolution is not appropriate for all reports of Prohibited Conduct, and the Title IX Coordinator retains the discretion to determine which cases are appropriate for voluntary resolution. If a complainant requests voluntary resolution, and the Title IX Coordinator concludes that voluntary resolution is appropriate based upon the Initial Assessment, the University will offer appropriate corrective actions and/or sanctions designed to maximize the complainant's access to all employment, educational, and extracurricular opportunities and benefits at the University and to eliminate a potential hostile environment. The outcomes of voluntary resolution conversations are mutually developed and agreed upon by the parties involved.

Voluntary resolution may include:

- continuing or modifying interim interventions;

- conducting targeted or broad-based educational programming or training for relevant individuals or groups;
- community service options;
- permanent interventions;
- providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred;
- communication with the respondent by the Title IX Coordinator and/or the Dean of Students;
- other forms of restorative justice options; and
- any other remedy that can be tailored to the involved individuals to achieve the goals of the Policy.

Voluntary resolution may also include conflict mediation or a restorative conference with a trained University community member selected by the Title IX Coordinator. The University will not use mediation or any method of face-to-face resolution to resolve a report of sexual assault.

Both the complainant and the respondent have the right to withdraw from voluntary resolution at any time and begin a formal investigation, unless corrective action or sanctions have been imposed, and all parties agreed that the voluntary resolution is final. Likewise, the University may determine that the report should be withdrawn from the voluntary resolution process and referred for investigation. If the parties are unable to agree on a voluntary resolution, the matter will be referred by the Title IX Coordinator or designee for investigation. Statements made during the voluntary resolution process may not be submitted to or considered in the investigation or by the Hearing Board.

Voluntary resolution will be concluded within a reasonable time after receipt of the report.

Because the outcomes of voluntary resolution conversations are mutually developed and agreed upon by the parties involved, an appeal of the process and its result is not permitted.

#### **146. Acceptance of Responsibility**

If, before or during a formal investigation, a respondent admits to a violation, and the complainant agrees that the admitted facts are accurate and complete, the Title IX Coordinator has discretion to forego or suspend an investigation and refer the matter directly to the Hearing Board to issue a sanction under Procedure 160.

#### **147. Withdrawal of Report**

If a complainant or reporter withdraws the report, the Title IX Coordinator will assess the circumstances and determine whether sufficient evidence of misconduct exists to support completing an investigation. In making this determination, the Title IX Coordinator will consider the factors set forth in Procedure 142, including whether prior reports have been made against the respondent and whether there may be an ongoing health or safety threat to the University community.

If the Title IX Coordinator determines that no action will be taken against the respondent because the report has been withdrawn, records will be maintained so that the matter can be re-opened should independent evidence of Prohibited Conduct warrant re-opening the report and/or investigation.

#### **148. Retaliation**

Retaliating in any way against any individual or a group because the individual or group made a good faith report concerning a violation of the Policy, was the subject of a report, or otherwise participated in the University's investigation of such a report is a violation of the Policy. Individuals who believe they have been subject to retaliation should immediately report their concerns to the Title IX Coordinator.

The University will take immediate and appropriate action to investigate and resolve any report of retaliation and may pursue corrective action and/or sanctions as appropriate. Corrective action and/or sanctions for retaliation may be separate and apart from the underlying conduct at issue, and a person may be found responsible for retaliation even if there is no responsibility for the underlying report of Prohibited Conduct. The Title IX Coordinator will review all reports of retaliation and determine whether to impose immediate corrective action or sanctions, or whether to refer the report for further investigation and resolution under the Gender-Based and Sexual Misconduct procedures. In making this determination, the Title IX Coordinator may consult with other University administrators.

#### **150. INVESTIGATION**

Date Created: October 14, 2017  
Date Edited:

#### **151. Investigators**

The Title IX Coordinator will determine the most effective method of investigating a report of a violation of the Policy. The Title IX Coordinator may investigate reports of Prohibited Conduct or designate investigators of the Title IX Coordinator's choosing to conduct a prompt, thorough, fair, and impartial investigation.

Any investigator used by the University, whether internal or external, will be impartial and free from any conflict of interest. Investigators must be able to produce evidence of annual training specific to investigating Prohibited Conduct.

Investigators do not function as advocates or support persons for complainants or respondents. Investigators may, however, identify issues of concern and refer the parties to the Title IX Coordinator or a Deputy Title IX Coordinator for assistance in obtaining resources.

#### **152. Investigative Process**

The Title IX Coordinator will send notice to both the complainant and respondent that an investigation has been initiated. The notice will include a concise summary of the report, the identities of the parties involved, the specific sections of the Policy alleged to have been violated, the date and location of the alleged incident, the name and contact information of the assigned investigator, and an overview of the investigation process.

Complainants and respondents may choose to participate or may decline to participate in the process. However, even if a complainant or respondent declines to participate, the University may continue to investigate the matter, proceed to a hearing, and issue corrective action and/or sanctions as appropriate and based on available information. A complainant who has declined to participate in the investigation will be provided with all notice and related correspondence, unless they notify the Title IX Coordinator that they do not wish to receive such correspondence. Absent compelling circumstances, witnesses are expected to participate in the process.

The University will afford both the complainant and respondent a full and fair opportunity to be heard, including the opportunity to identify witnesses and other evidence. The parties may choose to provide a written statement, and other supporting materials regarding the matter under review. However, it is the responsibility of the University, not the complainant or respondent, to gather the relevant evidence to the extent reasonably available. The investigator will provide timely updates to the complainant, respondent, and Title IX Coordinator, as appropriate or requested, about the timing and status of the investigation.

In conducting an investigation, the investigator may meet separately with the complainant (if participating), respondent, reporter (if applicable), and other pertinent witnesses. All parties and witnesses are expected to provide truthful information in any proceeding under the Policy. Knowingly providing false or misleading information is a violation of University policy and can subject a student or employee to disciplinary action. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are not later substantiated.

The investigator, in collaboration with the Title IX Coordinator, may amend the potential charges as part of the investigative process if additional information is disclosed that would suggest the existence of additional or more serious policy violations. At the conclusion of the process, the complainant and respondent are entitled to equal and timely access to all information that was considered in the investigation.

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

## **153. Evidence**

### **A) Relevant Evidence**

The investigator will only consider relevant evidence, which is evidence that makes a consequential fact more likely or less likely. The investigator will determine the relevance of any proffered information. In general, the investigator will consider direct observations and reasonable inferences from facts, but not statements of personal

opinion or statements as to any party's general reputation for any character trait, including honesty or chastity.

Witnesses must have observed the acts in question or have information relevant to the incident; they cannot participate solely to speak about an individual's character. The investigator may also consider physical and medical evidence, communications between the parties, and other information either offered by a party or discovered independently by the investigator.

## **B) Medical and/or Counseling Records**

In general, a party's medical and counseling records are confidential and not accessible to the investigator unless a party voluntarily chooses to share those records with the investigator. Any records shared with the investigator will become part of the investigative file and will be available for review by either party. The investigator may consult an expert to evaluate the relevance of any medical or counseling records.

## **C) Evidence of Prior Sexual History or Pattern Evidence**

The complainant or respondent's character or reputation with respect to other sexual activity is never relevant and will not be considered as evidence. However, prior sexual history may be considered under the following circumstances:

- (1)** Where there was a prior or ongoing relationship between the complainant and respondent and the respondent asserts that consent was sought and given, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties. However, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent.
- (2)** Where there is evidence of a pattern or conduct similar in nature by the respondent, either before or after the conduct in question, regardless of whether there has been a finding of responsibility, this information may be deemed relevant to the investigator or Hearing Board's determination of responsibility and/or assignment of a sanction. The determination of relevance will be based on an assessment of whether the prior or subsequent incident was substantially similar to the present allegation or the information indicates a pattern of behavior and substantial conformity with that pattern by the respondent.
- (3)** In addition, other conduct by either party may, under limited circumstances, be relevant to establish intent, motive, absence of mistake, to explain an injury or physical finding, or another ground deemed probative by the investigator.

If either party wishes to bring forth information concerning the other party's sexual history other acts, or pattern evidence in the hearing, such information must be brought to the attention of the investigator during the investigation. Where the investigator intends to consider evidence of prior sexual history as part of the investigation, the investigator will provide written notice to the parties and allow them the opportunity to challenge its inclusion. The investigator may consult with the Title IX Coordinator in

making the determination of relevance. Relevant evidence of prior sexual history must be based on direct information, not rumor, hearsay, speculation, or conjecture.

#### **154. Advisors**

Throughout the investigation and resolution process, both the complainant and the respondent have the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice. The advisor may be any individual selected by the complainant or respondent, including an attorney at the complainant or respondent's own expense. The advisor shall not actively participate during any meeting or proceeding related to the investigation or resolution process and may attend solely to observe, provide support, and advise the complainant or respondent.

To serve as an advisor, the individual will be required to meet with the Title IX Coordinator or designee in advance of their participation to understand the expectations of the role, privacy, and appropriate decorum. The Title IX Coordinator has the right at all times to determine what constitutes appropriate behavior on the part of an advisor. Any person who serves as an advisor should plan to make themselves available for meetings throughout the process, as the advisor's unavailability will not serve as a basis to significantly delay the proceedings.

#### **155. Investigation Findings**

##### **A) Preliminary Investigation Report**

Once an investigation is complete, the investigator will prepare a written Preliminary Investigation Report, which will include a summary of the relevant facts determined through the investigation but no findings. The Preliminary Investigation Report shall include a summary of all exculpatory and inculpatory evidence, including summaries of all interviews and refer to or attach other relevant information reviewed by the investigator, including, but not limited to, photographs, physical and medical evidence (as available), and communications between the parties.

The investigator shall submit the Preliminary Investigation Report to the Title IX Coordinator for review. The Title IX Coordinator may suggest additional clarification, the gathering of additional evidence, or other changes as appropriate.

After consultation with the Title IX Coordinator, the investigator will serve the Preliminary Investigation Report upon the complainant and respondent by sending it to the email address in the file or placing a hard copy in the U.S. Mail if the party does not have an email address.

Both parties will have equal and timely access to review all information gathered in the investigation. Witness statements may be reviewed, but neither party will have direct access to witnesses for further discussion. Both the complainant and respondent will have the opportunity to submit comments, feedback, any proposed corrections, and any additional information, including the identity of additional witnesses or evidence

for the investigator to pursue. Comments must be received within five (5) work days after the date of service. Any party who does not comment during the five (5) day review period will be deemed to have accepted the Preliminary Investigation Report.

For purposes of these procedures, a "work" day is a day where the University is open and conducting regular University operations. Work days do not include weekends, holidays that close the University, and days where emergency conditions result in University closure.

## **B) Final Investigation Report**

Following the receipt of any proposed corrections, or after the five (5) day review period has lapsed without comment, the investigator will conduct any additional investigation as appropriate, consult with the Title IX Coordinator, and prepare a written Final Investigation Report that includes summaries of all interviews and refers to or attaches other relevant information reviewed by the investigator, including, but not limited to, photographs, physical and medical evidence (as available), and communications between the parties

The Title IX Coordinator will review the Final Investigation Report and send copies of it to the complainant, respondent, and Hearing Board, allowing sufficient time for a thorough review.

Where the Title IX Coordinator serves as the investigator, the Vice President for Finance and Operations will assume responsibility for the oversight of the investigation, including review of the preliminary and final investigation reports.

## **160. HEARING PROCESS**

Date Created: October 14, 2017

Date Edited:

## **161. Referral to Hearing Board**

The Title IX Coordinator will forward all Final Investigation Reports and reports in which the respondent has accepted responsibility under Procedure 146, to the Hearing Board for a hearing. During the hearing, the Hearing Board will adjudicate responsibility and impose corrective action and/or sanctions, if applicable. The Title IX Coordinator will provide the Final Investigation Report to the Hearing Board in sufficient time before the hearing to allow a thorough review.

## **162. Notice of Hearing**

The Title IX Coordinator will serve a written Notice of Hearing to the complainant and the respondent via the email address on file or by placing a print copy in the U.S. Mail for parties without an email address on file. The Notice of Hearing will identify the date, time,

and place of the hearing and identify the persons serving on the Hearing Board. The Notice of Hearing will be sent at least seven (7) calendar days prior to the hearing date.

### **163. Composition of Hearing Board**

The composition of the panel shall be determined by the Title IX Coordinator. Each Hearing Board will be comprised of three persons drawn from a pool of trained individuals from within the University community and may consist of faculty and staff. The Title IX Coordinator or designee will serve as the non-voting chairperson and advisor to the Hearing Board. No University students shall serve on a Hearing Board.

The complainant and/or respondent may submit a written request to the Title IX Coordinator asking that a member of the Hearing Board be removed if the complainant or respondent believes there are reasonable, articulable grounds of actual bias, conflict of interest, or any other inability to be fair and impartial. Absent extenuating circumstances, the written request must be received by the Title IX Coordinator within three calendar (3) days following the date of service of the Notice of Hearing and must identify the grounds for the requested removal. The Title IX Coordinator has discretion to determine any such request.

If the Title IX Coordinator removes a member of the Hearing Board in response to a request from the complainant or respondent, the Title IX Coordinator will issue an updated Notice of Hearing identifying the new board member(s). The complainant and the respondent will have the opportunity to review the request in accordance with this section, and the process will repeat until a three-person panel is formed.

In the event that a full Hearing Board cannot be convened within a reasonable time, the Title IX Coordinator may fulfill the obligations of the Hearing Board.

### **164. Pre-Hearing Meeting**

As soon as possible after issuing the Notice of Hearing, the Title IX Coordinator will seek to meet individually with the complainant (if participating), the respondent, and their respective advisors to discuss the hearing process and answer any procedural questions.

### **165. Rescheduling the Hearing**

Either party may request to reschedule the hearing for academic, health-related, or other legitimate reasons. Requests to reschedule must be in writing, come directly from the complainant or respondent, be submitted to the Title IX Coordinator at least three (3) calendar days prior to hearing, whenever possible, and explain the reason for the request. The Title IX Coordinator has discretion to grant or deny such request.

### **166. The Hearing**

Both the complainant (if participating) and respondent have the opportunity to appear in person before the Hearing Board on the date and time designated on the Hearing Notice and may present an oral statement to the Hearing Board regarding the reported violation(s) of the Policy. The complainant and respondent will not be present at the hearing at the same time, but will have the opportunity to hear the other party's statement



by audio or video means. If the complainant or respondent are unable or choose not to attend the hearing, the hearing will proceed even in the absence of one or both of the parties. Investigators must also appear before the Hearing Board.

The complainant and respondent may not directly question one another during the hearing; however, the complainant and respondent may submit proposed questions for the other party to the Hearing Board. The Hearing Board will review the questions and determine, in its discretion, whether to ask the questions. Either party may present witnesses or documentary evidence to support the party's position at the hearing. The parties may directly question the investigator or other non-party witnesses. The Hearing Board may ask questions of the investigator, complainant, respondent, or any witness regarding the reported violation(s) of the Policy.

In lieu of or in addition to appearing at the hearing, either party may also submit to the Hearing Board a written statement outlining their understanding of what occurred, the impact it has had on them, other information relevant to the Hearing Board's decision regarding whether the respondent is responsible for violating the Policy, and/or appropriate sanctions for such violation.

If a respondent has been found responsible by the Hearing Board for violating the Policy, the violations will be considered by the University in the review of any later reported conduct issues by the respondent, including the evaluation of appropriate sanctions if the respondent is found responsible for subsequent violations of University policies.

#### **167. Hearing Outcome**

The Hearing Board will review the Final Investigation Report and the evidence presented at the hearing to weigh credibility, determine whether the investigation was conducted in a fair, impartial, and reliable manner, and whether, by the preponderance of the evidence, the respondent is responsible for violating the Policy.

The Hearing Board may request that further investigation be undertaken by the same or another investigator and/or may request that a new investigation be conducted. The Hearing Board may not conduct its own investigation.

If the Hearing Board concludes that the respondent is responsible for violating the Policy, the Hearing Board will determine sanctions in accordance with Procedure 170, which includes corrective actions and/or sanctions against an employee, other than student employees.

#### **170. CORRECTIVE ACTIONS AND SANCTIONS**

Date Created: October 14, 2017

Date Edited:

Corrective actions and sanctions are any actions or statuses assigned to a party by the University in response to misconduct. The purpose of corrective actions and sanctions is to modify behavior to uphold the educational mission of the community, as well as to help all members of the University community recognize acceptable boundaries and consequences of their actions.

If the Hearing Board finds the respondent responsible for any violation of the Policy or the respondent has admitted responsibility under Procedure 146, the Hearing Board will evaluate appropriate sanctions to address the misconduct, prevent its recurrence, and remedy its effects. The Hearing Board will impose corrective actions and/or sanctions that are proportionate to the Prohibited Misconduct for which the respondent is responsible. Some behavior is so harmful to the University community or so deleterious to the educational process that it may require serious sanctions or interventions, such as removal from University housing, removal from specific courses or activities, suspension or expulsion from the University, or appropriate employee or faculty disciplinary actions, up to and including termination.

In determining the appropriate corrective actions and/or sanctions, the Hearing Board may consider a number of factors including:

- the harm suffered by the complainant;
- the risk to either the complainant or the community posed by the respondent;
- the impact of the violation(s) on the University community;
- any previous violations of the Policy or any other University policy by the respondent;
- any mitigating or aggravating circumstances; and
- the information contained in any written statement submitted by the complainant and respondent to the Hearing Board in accordance with the Hearing Process.

The Hearing Board may consult with the Title IX Coordinator or designee in reaching its determination of appropriate sanctions.

## 171. Student Respondents

**Expulsion:** Permanent separation of the student from the University system. Notification will appear on the student's transcript. The student will also be barred (considered *Persona Non Grata*) from the University premises and related activities.

**Suspension:** Separation of the student from the University system for a specified period of time, not less than the remainder of the semester, during which the student has an opportunity to demonstrate the ability to function as a responsible member of the University community. After the suspension period and completion of other educational or restorative requirements, the student may apply for readmission. Should the Dean of Students determine that it is in the best interests of the student and the University community, the student will be permitted to rejoin the University community. Notification may appear on the student's transcript. During the suspension, the student will not participate in any University-sponsored activity and will be barred (considered *Persona Non Grata*) from University premises. Suspension may be deferred when significant mitigating factors are present, however, if a student under such deferral is found responsible for another violation, the suspension will take effect.

**Persona Non Grata (PNG):** The student is banned from any public or private space on University property or which is otherwise operated by the institution (including, but not limited to, the academic, residential, athletic, social, and auxiliary spaces), or at any event

sponsored or co-sponsored by Muskingum University. Unless prior arrangements have been made and written permission secured from the Title IX Coordinator or her/his designee, any attempt to access Muskingum University property during the indicated period will be viewed criminal trespass and will subject the student to arrest.

**Access Restriction:** The student is denied permission or access to specific areas or events on campus.

**University Housing Removal:** Removal of the student from University housing for a specific period of time. Any student receiving notification to vacate University housing facilities is generally entitled to forty-eight (48) hours in which to do so; however, in matters where the health or safety of others is in question, this timeline may be shortened. Removal from University housing may be deferred; however, if the student is found responsible for another violation of the Code of Student Conduct, removal from housing will take effect.

**Revocation or Appending of Degree:** The University reserves the right to revoke an awarded degree or append notation to the transcript for fraud in receipt of the degree or for serious disciplinary violations committed by a student prior to the student's graduation.

**Restriction from Employment at the University:** Prohibition of, or limitation of University employment.

**Removal or non-renewal of University sponsored academic scholarship.**

**Conduct Probation:** A specified period of time during which any further violation of the Code of Student Conduct will receive careful review and may subject the student to suspension or expulsion. A student's status on disciplinary probation may have an impact on their ability to participate in certain activities connected with or related to the University both on and off campus.

**Loss of Privilege:** The student could lose any or a combination of the following privileges: participation in intercollegiate and/or intramural athletics; participation in activities or events sponsored by the University or affiliated with the University; holding an office in a student organization; or registration of a motor vehicle.

**No Contact Restriction:** Student is restricted from contact with named individual through verbal (speaking to, or about, in the physical presence of the named individual, in person or via electronic measures), physical (touching, gestures, staring/leering/extended focus aside from a normal visual glance to identify named individual, etc.), or electronic (social media, text messages, any other app, or electronic device) means on or off University property. While it is understood that the nature of the University environment will not provide for complete avoidance where the named individual is a student, reasonable compliance is expected and any unnecessary contact must be avoided.

**Parental Contact:** Student must write an original letter and submit it to the Title IX Coordinator. If the sanction indicates that the letter will be "held," it will be retained on file pending any additional violation. If it does not indicate a hold, the letter will be sent immediately upon review.

The letter must contain the following information:

- the full name and address of the student's parent or legal guardian;
- a review of the student's conduct history, the violations for which the student has accepted or was assigned responsibility, the circumstances of the incident

in question (who, what, where, when, why and how), the consequences of the student's actions (both in the community and with regard to the sanctions received);

- the future outcomes expected should subsequent inappropriate behavior occur; and
- the student's plan for future behavior as it relates to the incident and outcomes.

**Reflection Paper:** The student must compose an original paper with one inch (1") margins and double spaced type of a font style providing at least two hundred seventy-five (275) words per page (e.g. 12 point Times Roman). The paper should address the following issues:

- what led to the decisions for which the student was held accountable and how did the student determine such behavior was acceptable;
- what the actions say about them to others and how they would feel if their actions were shared with the entire University community and their family and friends;
- how their behaviors affected others, and how they feel about themselves in light of the incident; and
- what strategies they have developed to address future situations like the one at issue.

Only full pages count to satisfy length expectations (i.e. a two-page paper means at least two full pages).

**Research Paper:** The student must compose an original paper with one-inch (1") margins and double-spaced type of a font style providing at least two hundred seventy-five (275) words per page (e.g. 12-point Times Roman). The paper should address the topic assigned and should provide at least two properly cited articles/books per page. Only full pages count to satisfy length expectations (i.e. a two-page paper means at least two full pages).

**Community Service/Work Alternative:** The student is required to secure the service/work opportunities, but must propose and receive approval from the Title IX Coordinator *in advance* of doing any service/work. All submitted hours must be documented the Community Service Reporting Sheet provided by the Title IX Coordinator, including the name and contact information of the on-site coordinator. Failure to complete hours within the time required by the sanction will result in a referral to Student Affairs to process a charge of "failure to fulfill sanction," but in the case of work alternative, any balance will be billed to the student's account by the Student Life Office.

**Educational Assignment:** The student will complete an educational assignment or create an educational resource as defined by the Hearing Board. Resources could include bulletin boards, flyers, brochures, or other items deemed relevant to the incident.

**Counseling Assessment and/or Treatment Plan:** The student must engage in an assessment and/or treatment program facilitated by a counselor or social worker licensed to practice in the state of Ohio. This plan will be designed to support the student and prevent the recurrence certain behavior. An initial session must be completed by the listed deadline and continue under the terms established by the counselor (including individual counseling session length and frequency, as well as participation in any therapeutic activities). A disclosure form must be signed by the student and the selected counselor

providing for communication between the counselor and the Title IX Coordinator regarding status in the plan, concerns, and that the student is actively participating in the treatment plan established by said counselor through to completion.

**Deferral:** Sanctions may be deferred under specific conditions, or the following standard expectations: a) the student will not be involved in any further violations of University policy or procedure, and b) the student actively pursues the completion of any other sanctions assigned by the Hearing Board in a thorough and timely manner. During the deferral period, any violation of University policy or failure to fulfill any portion of other sanctions, shall render the deferral of the underlying sanction null and void and the sanction shall be immediately implemented.

**University Housing Probation:** Specified period of time during which any further violation of the Code of Student Conduct, especially as it pertains to the maintenance of the University residence community, may result in the student being removed from University housing.

**Written Warning:** The student is given formal written notice that further misconduct will result in more severe action through the conduct system.

**Restitution:** The student is required to make payment to the University or another for loss or damage to property.

**Other Sanctions:** Other sanctions may be imposed instead of or in addition to those specified above, such as work requirements, denial of participation in University activities, restriction of privileges, and solutions assigned through mediation, etc.

## 172. Group and Organization Respondents

**Deactivation:** Loss of all privileges, including University recognition, for a specified period of time.

**University House Transfer or University House Removal:** Placement in another room or University house, or removal from a University house. Housing transfers or removals may be temporary or permanent depending on the circumstances.

**Written Warning:** A formal written censure that the group or organization has violated University policy, and that future violations of University policy may result in further disciplinary action, up to, and including, deactivation.

**Training:** Requiring the group or organization to conduct training for its staff and/or members.

**Apology:** Letters of apology to individuals, houses, and/or the University community designed to help the respondent assess the effects of their policy violation(s). These letters will be maintained as part of the respondent's disciplinary record for as long as the record is maintained.

**Restorative Project/Community Service:** A project specifically designed to lead the respondent to understand the harm done to the complainant and the community, to accept the responsibility for that harm, and to repair that harm, if possible.

## 173. Faculty and Staff Respondents

**Oral Reprimand**  
**Counseling**  
**Training**  
**No Contact Order**  
**Written Reprimand**  
**Suspension with Pay**  
**Suspension without Pay**  
**Restitution**  
**Demotion**  
**Termination**

**174. Vendor and Contractor Respondents**

Responsibility for violation of the Policy may result in persona non grata, access restrictions, or no contact restrictions for individual employees being barred from University property, or termination of the contract based on a material breach of its terms.

**175. Guests and Visitor Respondents**

Responsibility for violation of the Policy may result in persona non grata, access restrictions, no contact restrictions, or a written warning.

**176. Notice of Outcome**

The Hearing Board will promptly submit a written Notice of Outcome to the Title IX Coordinator. The Notice of Outcome shall include the Hearing Board's final determination of responsibility per charge, an explanation of its rationale for making each determination, including the evidence upon which it relied, and any corrective action and/or sanction.

The Title IX Coordinator will add the deadline for filing an appeal and a description of the appeal procedures to the Notice of Outcome and serve it concurrently upon the complainant and respondent within three (3) work days from the date the Hearing Board sent the Notice of Outcome. The Title IX Coordinator may redact information regarding personalized sanctions in compliance with the Family Educational Rights and Privacy Act ("FERPA").

**180. *APPEAL PROCESS***

Date created: October 14, 2017

Date edited:

**181. Initiating an Appeal**

Either party may appeal the Hearing Board's findings or sanctions within seven (7) calendar days after service of the notice of outcome from the Title IX Coordinator. The appeal must be made in writing to the Title IX Coordinator and must explain the grounds for the appeal. If either the respondent or complainant appeals, the Title IX Coordinator will notify the other party in writing that an appeal has been submitted, and the other party may submit a response in writing within three (3) work days.

## **182. Grounds for Appeal**

The only grounds for appeal are (1) new evidence that was not discoverable at the time of the hearing, and (2) a substantial error in procedure that substantially affected the outcome of the hearing. Disagreement with the Hearing Board's decision or sanctions is not, by itself, grounds for an appeal.

## **183. Scope of Review**

The appeal is an impartial review of the information considered by the Hearing Board. The appeal is not a new investigation of the report. The appeal will be heard by the Provost (for matters involving faculty and students) or the Vice President for Finance & Operations (for non-faculty employees). Both are trained and are impartial adjudicators. The Provost or Vice President for Finance & Operations may affirm, reverse, or modify the decision of the Hearing Board, or may direct the Hearing Board to reconsider certain findings. The Title IX Coordinator will communicate the outcome of the appeal to the parties within three (3) work days after determination of the appeal.

## **190. MISCELLANEOUS**

Date Created: October 14, 2017

Date Edited:

## **191. Non-Disclosure Agreements**

The University will not require a party to abide by a non-disclosure agreement that would prevent the re-disclosure of information related to the outcome of any proceeding under the Policy.

## **192. Procedural Amendments**

The University may amend or modify the procedures that support the Policy at any time if it determines such amendment or modification is warranted under the circumstances.