

# Title IX

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## Gender Based Misconduct Policy

*"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." Legal Citation: Title IX of the Education Amendments of 1972, and its implementing regulation at 34 C.F.R. Part 106 (Title IX)*

### Introduction

Members of the university community, guests and visitors have the right to be free from all forms of gender and sex-based discrimination, examples of which can include acts of sexual violence, sexual harassment, domestic violence, dating violence, and stalking. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. Mount Mercy believes in a zero tolerance policy for gender-based misconduct and as such we are committed to creating and maintaining an atmosphere in which all members of the campus community are treated with respect and dignity. This policy is intended to reinforce academic freedom and maintain academic standards as it seeks to assure fairness for all and thus provide a non-threatening environment for the widest possible exchange of ideas.

When an allegation of misconduct is brought to an appropriate administration's attention, and a respondent is found to have violated this policy, serious sanctions will be used to reasonably ensure that such actions are never repeated. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This policy is intended to define community expectations and to establish a mechanism for determining when those expectations have been violated.

Mount Mercy has developed, implemented, and disseminates a written sexual assault policy for Mount Mercy University. This policy is published in the Good Book, online, and is available in the Dean of Student's Office. This policy covers concerns of sexual misconduct including sexual abuse, sexual assault, domestic violence, dating violence, and stalking involving a student, both on and off campus. Below you will find additional information regarding this policy.

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## Title IX Coordinator

Each college or university receiving Federal financial assistance must designate at least one professional employee as the Title IX Coordinator to oversee compliance efforts and investigate any complaint of sex discrimination. Adoption of procedures to provide prompt and equitable resolution of complaints is a critical function of the Title IX Coordinator. The Coordinator assists individuals alleging sexual harassment or discrimination in filing their grievance(s). The Coordinator also works in conjunction with other college officials focusing on prevention and policy development.

At Mount Mercy University, the Title IX Coordinator is responsible for monitoring the overall implementation of Title IX for the University. Major duties include, but are not limited to:

- Training investigators, hearing boards, and appeals officers

- Overseeing the investigation process from start to finish
- Providing notices of charge, hearing, and outcome to Complainant and Accused parties
- Coordinating campus notification
- Ensuring preventative and protective measures are put in place pre and post
- Work with Complainant and Accused to put in place initial remedial actions
- Assuring compliance with the timeline
- Record-keep all activities

## The Title IX Coordinator at Mount Mercy University

**Malinda Jensen**

**Dean of Students & Director of Residence Life**

240N University Center

mjensen@mtmercy.edu | 319-363-1323 ext. 1630

In seeking to identify and respond to instances of sexual harassment, Mount Mercy recognizes the need to consider accepted standards of mature behavior, academic freedom and freedom of expression. Title IX requires Mount Mercy University to respond to certain harassment on the basis of sex, which it knows about or reasonably should have known about. The university must:

- Investigate what happened.
- Take appropriate steps to resolve the matter. The University must do its best to eliminate the harassment, prevent recurrence, and remedy effects even if no formal complaint has been made or when a person making a complaint does not wish to further participate in the process.
- Take interim measures during the investigation to prevent potential further harassment.

## Overview of Policy Expectations

### Physical Sexual Misconduct

The expectations of our community regarding sexual misconduct can be summarized as follows: In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing and voluntary consent prior to and during sexual activity. Consent is sexual permission. Consent can be given by word or action, but non-verbal consent is not as clear as talking about what you want sexually and what you don't. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Silence--without actions demonstrating permission--cannot be assumed to show consent.

Additionally, there is a difference between seduction and coercion. Coercing someone into sexual activity violates this policy in the same way as physically forcing someone into sex. Coercion happens when someone is pressured unreasonably for sex.

Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) because they lack the capacity to reasonably understand the situation.

Individuals who consent to sex must be able to understand what they

are doing. Under this policy, “No” always means “No,” and “Yes” may not always mean “Yes.” Anything but a clear, knowing and voluntary consent to any sexual activity is equivalent to a “no.”

## Sexual Violence Risk Reduction Tips

Risk reduction tips can often take a victim-blaming tone, even unintentionally. With no intention to victim-blame, and with recognition that only those who commit sexual violence are responsible for those actions, these suggestions may nevertheless help you to reduce your risk experiencing a non-consensual sexual act. Below, suggestions to avoid committing a non-consensual sexual act are also offered:

- If you have limits, make them known as early as possible.
- Tell a sexual aggressor “NO” clearly and firmly.
- Try to remove yourself from the physical presence of a sexual aggressor.
- Find someone nearby and ask for help.
- Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
- Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do.

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk for being accused of sexual misconduct:

- Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
- Understand and respect personal boundaries.
- DON'T MAKE ASSUMPTIONS about consent; about someone's sexual availability; about whether they are attracted to you; about how far you can go or about whether they are physically and/or mentally able to consent. If there are any questions or ambiguity then you DO NOT have consent.
- Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. They may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which they are comfortable.
- Don't take advantage of someone's drunkenness or drugged state, even if they did it to themselves.
- Realize that your potential partner could be intimidated by you, or fearful. You may have a power advantage simply because of your gender or size. Don't abuse that power.
- Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
- Silence and passivity cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

In campus hearings, legal terms like “guilt,” “innocence” and “burdens of proof” are not applicable, but the university never assumes a student is in violation of university policy. Conduct hearings are conducted to take into account the totality of all evidence available, from all relevant sources.

Mount Mercy reserves the right to take whatever measures it deems necessary in response to an allegation of sexual misconduct in order to protect students' rights and personal safety. Such measures include, but are not limited to, modification of living arrangements, interim suspension from campus pending a hearing, and reporting the matter to the local police. Not all forms of sexual misconduct will be deemed to be equally serious offenses, and the university reserves the right to impose different sanctions, ranging from verbal warning to expulsion, depending on the severity of the offense. The university will consider the concerns and rights of both the complainant and the person accused of sexual misconduct.

## Sexual Misconduct Offenses include, but are not limited to:

1. Sexual Harassment
2. Non-Consensual Sexual Contact (or attempts to commit same)
3. Sexual Assault
4. Sexual Exploitation
5. Sexual Intimidation

## Sexual Harassment

Sexual Harassment is:

- unwelcome, gender-based verbal or physical conduct that is,
- sufficiently severe, persistent or pervasive that it,
- unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the university's educational program and/or activities, and is based on power differentials (quid pro quo), the creation of a hostile environment, or retaliation.

## Three types of Sexual Harassment

### • Hostile Environment

A hostile environment includes any situation in which there is harassing conduct that is sufficiently severe, persistent/pervasive and objectively offensive that it alters the conditions of employment or limits, interferes with or denies educational benefits or opportunities, from both a subjective (the alleged victim's) and an objective (reasonable person's) viewpoint.

The determination of whether an environment is “hostile” must be based on all of the circumstances. These circumstances could include:

- The frequency of the conduct;
- The nature and severity of the conduct;
- Whether the conduct was physically threatening;
- Whether the conduct was humiliating;
- The effect of the conduct on the alleged victim's mental or emotional state;
- Whether the conduct was directed at more than one person;
- Whether the conduct arose in the context of other discriminatory conduct;
- Whether the conduct unreasonably interfered with the alleged victim's educational or work performance

### • Quid Pro Quo sexual harassment

Quid pro quo sexual harassment involves unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature; and submission to or rejection of such conduct results in adverse educational or employment action.

- **Retaliatory harassment**

is any adverse employment or educational action taken against a person because of the person's participation in a complaint or investigation of discrimination or sexual misconduct.

## Non-Consensual Sexual Contact

Non-Consensual Sexual Contact is:

- any intentional sexual touching,
- however slight,
- with any object,
- by a man or a woman upon a man or a woman,
- that is without consent and/or by force

### Sexual Contact includes:

- Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.

## Sexual Assault

"Sexual assault" definition. Sexual Assault is a form of sexual misconduct and represents a continuum of conduct from forcible intercourse to nonphysical forms of pressure that compel individuals to engage in sexual activity against their will.

Examples of sexual assault under this policy include, but are not limited to, the following behaviors, however slight, when consent is not present:

- sexual intercourse (anal, oral, or vaginal). Intercourse, however slight, meaning vaginal penetration by a penis, object, tongue, or finger; anal penetration by a penis, object, tongue, or finger; or oral copulation (mouth to genital contact or genital to mouth contact);
- attempted sexual intercourse (anal, oral, or vaginal);
- intentional contact with the breasts, buttocks, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts;
- any other intentional unwanted bodily contact of a sexual nature;
- use of coercion, manipulation, or force to make someone else engage in sexual touching, including breasts, chest, and buttocks;
- engaging in sexual activity with a person who is incapacitated and unable to provide consent due to the influence of drugs, alcohol, or other mental or physical condition (e.g., asleep or unconscious).

## Sexual Exploitation

Occurs when a student takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- Invasion of sexual privacy;
- Prostituting another student;
- Non-consensual video or audio-taping of sexual activity;

- Going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex);
- Engaging in voyeurism;
- Knowingly transmitting an STI or HIV to another student;
- Exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals;
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation

## Sexual Intimidation

Sexual intimidation" definition. Sexual intimidation involves:

- threatening another person that you will commit a sex act against them;
- engaging in indecent exposure; or
- stalking another person who reasonably perceives the stalker is pursuing a romantic and/or sexual relationship. Stalking is a course of conduct directed at a specific person that would cause a reasonable person to feel fear.

Examples of prohibited stalking can include but are not limited to:

1. Non-consensual repeated communication including in-person communication, telephone calls, voice messages, text messages, email messages, social networking site postings, instant messages, postings of pictures or information on web sites, written letters, gifts, ordering goods or services, or any other communications that are undesirable
2. Following, pursuing, waiting, or showing up uninvited at a workplace, place of residence, classroom, or other locations frequented by a recipient of unwelcome conduct
3. Monitoring online activities, surveillance and other types of observation, whether by physical proximity or electronic means, attempts to gather information about the recipient of unwelcome conduct;
4. Vandalism, including attacks on data and equipment;
5. Direct physical and/or verbal threats against a recipient of unwelcome conduct or loved ones of a recipient of unwelcome conduct, including animal abuse;
6. Gathering of information about a recipient of unwelcome conduct from family, friends, coworkers, and/or classmates;
7. Manipulative and controlling behaviors such as threats to harm oneself, or threats to harm someone close to the recipient of unwelcome conduct;
8. Defamation or slander against the recipient of unwelcome conduct; posting false information about the recipient of unwelcome conduct; posing as the complainant in order to post to web sites, news groups, blogs, or other sites that allow public contributions; and/or encouraging others to harass the recipient of unwelcome conduct;
9. Posing as someone other than oneself to initiate transactions, financial credit, loans, or other contractual agreements;
10. Arranging to meet the recipient of unwelcome conduct under false pretenses.

\*Stalking of a nonsexual nature may be prohibited under other Mount Mercy University policies. See MMU's Code of Conduct.

## Additional Applicable Definitions

- **Consent:** Consent is affirmative, clear, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity.
  - Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
  - Previous relationships or prior consent cannot imply consent to future sexual acts.
- **Force:** Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent.
  - Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
    - NOTE: There is no requirement that a party resists the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.
  - In order to give effective consent, one must be of legal age.
  - Sexual activity with someone who one should know to be -- or based on the circumstances should reasonably have known to be -- mentally or physically incapacitated (by alcohol or other drug use, unconsciousness or blackout), constitutes a violation of this policy.
    - Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the "who, what, when, where, why or how" of their sexual interaction).
    - This policy also covers a person whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the taking of rape drugs. Possession, use and/or distribution of any of these substances, including Rohypnol, Ketamine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another student is a violation of this policy. More information on these drugs can be found at <http://www.911rape.org/>
- Use of alcohol or other drugs will never function as a defense for any behavior that violates this policy.
- The sexual orientation and/or gender identity of individuals engaging in sexual activity is not relevant to allegations under this policy. For reference to the pertinent state statutes on sex offenses, please see [insert reference here].

## Other Misconduct Offenses when sex or gender-based

1. Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
2. Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of gender;
3. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
4. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the university community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);
5. Bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally (that is not speech or conduct otherwise protected by the 1<sup>st</sup> Amendment).
6. Violence between those in an intimate relationship to each other[2] (p.     );
7. Stalking, defined as repetitive and/or menacing pursuit, following, harassment and/or interference with the peace and/or safety of a member of the community; or the safety of any of the immediate family of members of the community.

### Retaliation

Retaliation of any kind against anyone who in good faith files a complaint of sexual misconduct or participates in the investigation process is prohibited and may be sanctioned. An individual who engages in retaliation against a person who files, or participates in an investigation into, a complaint of sexual harassment will be subject to appropriate sanctions. Anyone who believes they have been subjected to retaliation should immediately report the situation to the EOO or Title IX Coordinator.

### False Reports

Any individual making deceitful allegations of sexual harassment will be subject to appropriate sanctions.

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## University Disciplinary Proceedings

The Complainant may file an internal complaint against the Accused using the formal process provided for sexual harassment complaints. Either party may have an advocate at any meetings or hearings related to this matter. This process may be used whether a criminal charge is filed or not and also may be used if the Accused is found not guilty in a criminal court. The University reserves the right to bring a complaint against a student for sexual misconduct if the student is deemed a threat to the University community. If the incident has been reported to the police and the Accused has been charged with the crime, the individual may be suspended indefinitely pending review of the circumstances by the University. The Accused may be expelled, suspended for a specific period, or barred from attending, as determined by the Dean of Students & Director of Residence Life or appropriate Vice President.

In a situation where sexual abuse has occurred, the University will take appropriate steps to accommodate changes to a Complainant's academic, employment and/or living situations, if requested and reasonably available.

### **Procedures**

It is the goal of Mount Mercy to ensure a prompt and thorough investigation and review of allegations of sexual harassment, to find an equitable resolution, to apply disciplinary sanctions or educational solutions where appropriate, and to provide an institutional process to assure fairness to all parties. (If anyone who normally would be involved in this process is a party to the complaint, the President will appoint an alternate). This process provides for both an informal and a formal set of procedures with the intent to insure that all complaints of sexual harassment are addressed and resolved in a fair and equitable manner.

1. Individuals are encouraged, when they are comfortable in doing so, to attempt to resolve their concern privately. However, any member of the Mount Mercy faculty, staff, or student body who believes they have been subjected to unlawful discrimination or harassment may initiate either an informal or a formal complaint, as provided by this policy. Individuals may also file a criminal complaint with the police.
2. As the first step in the process, a person with a sexual harassment complaint may contact any trusted employee of the University. This person will then assist the complainant in contacting the Equal Opportunity Officer (EOO) or the Title IX Coordinator or request that an alternative be designated by the President if the Equal Opportunity Officer or the Title IX Coordinator is the subject of the complaint. Consistent with state and federal time-lines, a complaint should be initiated with the EOO or Title IX Coordinator as soon as possible, but not more than 300 days after the alleged sexual harassment incident.
3. The EOO or Title IX Coordinator will schedule an initial meeting with the Complainant. The EOO or the Title IX Coordinator will also inform the Complainant that he or she has the right to contact the Cedar Rapids Police regarding the matter. The EOO or Title IX Coordinator will not contact the student's family or guardian unless authorized by the student to do so, though a student will be advised to contact his or her family or guardian themselves. The EOO or the Title IX Coordinator will also make a determination whether immediate action is necessary to protect the safety of the Complainant and take appropriate action.
4. At the Initial Meeting the EOO or Title IX Coordinator will arrange for the complainant to document the complaint in writing. The written complaint should include the following information: name, address and telephone number of the complainant, nature of the complaint, date(s), the location of the occurrence(s), individual(s) involved including possible witnesses, evidence on which the complaint is based, and redress sought by the complainant.
5. The EOO or Title IX Coordinator will inform the Complainant of the options available and determine if the Complainant wishes to proceed under the informal or formal complaint procedure.

### **Informal or the Formal Procedure**

The Complainant must advise the EOO or Title IX Coordinator in writing within fifteen (15) calendar days of the Initial Meeting whether Complainant chooses to proceed under the Formal or Informal

Procedure. If the Complainant does not make a timely choice, the Complaint will be addressed using the Formal Procedure.

### **Informal Procedure**

1. If the Complainant chooses to proceed under the Informal Procedure, in situations not involving sexual violence, the EOO or Title IX Coordinator will inform the Accused of the nature of the complaint, identity of the Complainant, the complainant's willingness to attempt to resolve the matter informally, and that retaliation by the Accused is strictly prohibited and will result in sanctions. The Accused will then be given the opportunity to agree to participate in the Informal Procedure. In the event the Accused chooses not to proceed under the Informal Procedure, the Complainant will be so advised by the EOO or Title IX Coordinator and the EOO or Title IX Coordinator will initiate the Formal Procedure.
2. If after consultation with the Complainant and the Accused the parties agree to proceed under the Informal Procedure, the EOO will notify the appropriate Facilitator of the complaint. (Two neutral Facilitators and two alternates, two faculty and two staff, who will be trained in the process of non-binding mediation, will be appointed by the President at the beginning of each academic year to assist with the Informal Procedure. The faculty Facilitator will facilitate when the accused is a faculty member and the staff Facilitator will facilitate when the accused is an administrator, staff member or student. In the event of a conflict, the alternate Facilitator will serve.
3. If the complaint warrants, the Facilitator may recommend to the EOO or Title IX Coordinator actions protecting the rights and privacy of either the Complainant and/or the Accused until the process is concluded.
4. The Facilitator will meet with the Complainant, the Accused and the EOO or Title IX Coordinator to determine if a resolution is available that is acceptable to the Complainant, the Accused, and the EOO.
5. If a mutually acceptable resolution is agreed upon, the Facilitator will insure that all agreed to steps are taken to finalize the resolution. Finalization of the resolution includes, but is not limited to, a written document signed by the Complainant, the Accused and the Facilitator.
6. If a mutually acceptable resolution is not agreed upon, the Facilitator will then advise the EOO or Title IX Coordinator to initiate the Formal Procedure.
7. The Facilitator will notify the parties of the conclusion of the Informal Procedure, write a summary of the complaint and the results of the Informal Procedure and file it with the EOO's or Title IX Coordinator's office. This summary will be available if there are other alleged incidents of sexual harassment. A written record of any sanctions taken will be placed in the Accused's personnel or academic file.
8. The Informal Procedure will not be used to resolve complaints of sexual abuse or misconduct.

### **Formal Procedure**

If a complaint is not resolved informally or if the Complainant chooses to initiate the Formal Process:

1. The EOO or the Title IX Coordinator his/her designee will begin a prompt and thorough investigation. The investigation normally will

be started no later than ten (10) days after the Formal Process is initiated.

2. If the Accused has not already been informed of the complaint, the EOO or Title IX Coordinator will inform the Accused of the nature of the complaint, identity of the Complainant, and that retaliation by the Accused is strictly prohibited and will result in sanctions.
3. The Complainant, the Accused and appropriate witnesses will be interviewed by the EOO and applicable documents will be reviewed by the EOO or Title IX Coordinator. The Complainant and the Accused may identify witnesses to be interviewed. All interviewees will be directed to maintain confidentiality with respect to the investigation and will be informed about the non-retaliation policy.
4. Upon completion of the investigation, the EOO or Title IX Coordinator will prepare a written report which details the EOO's or Title IX Coordinator's findings, conclusions and any recommended actions, which will be shared with the Complainant and the Accused.
5. If the complainant and the accused are both students, the EOO or Title IX Coordinator will determine if the incident should be brought before a Hearing Panel. If this determination is made, the formal hearing panel process in the Code of Student Conduct will be followed. If the one of the parties is not a student, the University Formal Procedure 3.5.11.1.4.2 will be followed.
6. If the Complainant and Accused accept the EOO's or Title IX Coordinator's recommended actions, they will be implemented and a final report will be placed on file in the EOO's or Title IX Coordinator's office. Any formal action against the Accused will be placed in the Accused's personnel or conduct file.
7. If either the Complainant or the Accused do not accept the recommended actions, they must give written notification to the EOO or Title IX Coordinator within five (5) calendar days after the EOO or Title IX Coordinator delivers written notice. The EOO or Title IX Coordinator will then notify the other party within five (5) calendar days thereafter and the Complainant, the Accused or the EOO or Title IX Coordinator will then request a fact-finding hearing.
8. Any such request for a Fact-Finding Hearing must be made to the appropriate hearing panel within fifteen (15) calendar days after the EOO or Title IX Coordinator provides written notice by U.S. mail of any recommended actions. The hearing panel will make its decision based on a preponderance of the evidence.
9. Where the Accused is a member of the faculty, the procedures set forth in section 4.14 Grievance Policy of Volume IV, Faculty Manual will apply to the Fact-Finding Hearing and all appeals. Where the Accused is a member of the administration or staff, the procedures set forth in section 5.2 Grievance Policy of Volume V, Staff Policies will apply to the Fact-Finding Hearing and all appeals thereto. (In the event the Accused is a student, the Dean of Students & Director of Residence Life will appoint a student representative to sit as an ex-officio member of the hearing panel).
10. During the Fact-Finding Hearing, the Complainant, the Accused and the EOO or Title IX Coordinator shall each have the opportunity to present evidence in support of their respective positions. The EOO or Title IX Coordinator shall be designated to present evidence to support the position of the University.
11. Legal representation is allowed at the Fact-Finding Hearing, but counsel's presence is limited to observation and advising the party.

## Sanction Statement

- Any student found responsible for violating the policy on Non-Consensual or Forced Sexual Contact (where no intercourse has occurred) will likely receive a sanction ranging from probation to expulsion, depending on the severity of the incident, and taking into account any previous campus conduct code violations.\*
- Any student found responsible for violating the policy on Non-Consensual or Forced Sexual Intercourse will likely face a recommended sanction of suspension or expulsion.\*
- Any student found responsible for violating the policy on sexual exploitation or sexual harassment will likely receive a recommended sanction ranging from warning to expulsion, depending on the severity of the incident, and taking into account any previous campus conduct code violations.\*

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

## Appeals

### Process Guidelines

Sanctions imposed during the conduct process post-investigation can be appealed by any party according to the grounds, below. Post-hearing, any party may appeal the findings and/or sanctions only under the grounds described, below.

- All sanctions imposed by the original hearing body will be in effect during the appeal. A request may be made to the Vice President for Enrollment & Student Services for special consideration in exigent circumstances, but the presumptive stance of the institution is that the sanctions will stand. Graduation, study abroad, internships/externships, etc. **do NOT** in and of themselves constitute exigent circumstances, and students may not be able to participate in those activities during their appeal. In cases where the appeal results in reinstatement to the institution or of privileges, all reasonable attempts will be made to restore the student to their prior status, recognizing that some opportunities lost may be irretrievable in the short term.
- The decision of the original hearing body may be appealed by petitioning the Vice President for Enrollment & Student Services. Accused students or complainants must petition within 3 business days of receiving the written decision for a review of the decision or the sanctions imposed. Any party who files an appeal must do so in writing to the Dean of Students Office. The DOS will share the appeal with the other party (e.g., if the accused student appeals, the appeal is shared with the complainant, who may also wish to file a response), and then the DOS will draft a response memorandum (also shared with all parties). All appeals and responses are then forwarded to the appeals officer/committee for initial review to determine if the appeal meets the limited grounds and is timely. The original finding and sanction will stand if the appeal is not timely or substantively eligible, and the decision is final. If the appeal has standing, the documentation is forwarded for consideration. The party requesting appeal must show error as the original finding and sanction are presumed to have been

decided reasonably and appropriately. The ONLY grounds for appeal are as follows:

1. A procedural [or substantive error] occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.);
  2. To consider new evidence, unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included;
  3. The sanctions imposed are substantially disproportionate to the severity of the violation.
- If the appeals officer or committee determines that new evidence should be considered, it will return the complaint to the original hearing body to reconsider in light of the new evidence, only. The reconsideration of the hearing body is not appealable.
  - If the appeals officer or committee determines that a material procedural error occurred, it may return the complaint to the original hearing body with instructions to reconvene to cure the error. In rare cases, where the procedural [or substantive] error cannot be cured by the original hearing officers (as in cases of bias), the appeals officers or committee may order a new hearing on the complaint with a new body of hearing officers. The results of a reconvened hearing cannot be appealed. The results of a new hearing can be appealed, once, on the four applicable grounds for appeals.
  - If the appeals officer or committee determines that the sanctions imposed are disproportionate to the severity of the violation, the appeals officer or committee will return the complaint to the student conduct office, which may then increase, decrease or otherwise modify the sanctions. This decision is final.

### The procedures governing the hearing of appeals include the following:

- All parties should be timely informed of the status of requests for appeal, the status of the appeal consideration, and the results of the appeal decision;
- Every opportunity to return the appeal to the original hearing body for reconsideration (remand) should be pursued;
- Appeals are not intended to be full rehearings of the complaint (de novo). In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal;
- This is not an opportunity for appeals officers to substitute their judgment for that of the original hearing body merely because they disagree with its finding and/or sanctions. Appeals decisions are to be deferential to the original hearing body, making changes to the finding only where there is clear error and to the sanction only if there is a compelling justification to do so;
- Sanctions imposed are implemented immediately unless the Director of Student Conduct stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
- The appeals committee or officer will render a written decision on the appeal to all parties within seven (7) business days\* from hearing of the appeal. The committee's decision to deny appeal requests is final.

## Definitions

### Additional Applicable Definitions

- **Consent:** Consent is affirmative, clear, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity.
  - Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
  - Previous relationships or prior consent cannot imply consent to future sexual acts.
  - Affirmative consent means that a verbal, conscious, and voluntary agreement to engage in sexual activity.
  - Affirmative consent must be ongoing throughout any activity and can be revoked at any time.
  - Each person involved is responsible for ensuring they have affirmative consent of any other person engaging in the sexual activity.
  - Sober (someone too drunk to drive or walk home on her/his own is too drunk to give consent)
  - Of age (the Student Code of Conduct requires each party to be at least 18 years old)
  - Awake and conscious. Lack of protest or resistance does not mean consent. Silence does not mean consent.
  - Uncoerced and unthreatened (each party must feel free and safe to say yes or no)
- **Force:** Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent.
  - Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
    - NOTE: There is no requirement that a party resists the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.
  - In order to give effective consent, one must be of legal age.
  - Sexual activity with someone who one should know to be -- or based on the circumstances should reasonably have known to be -- mentally or physically incapacitated (by alcohol or other drug use, unconsciousness or blackout), constitutes a violation of this policy.
    - Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the "who, what, when, where, why or how" of their sexual interaction).
    - This policy also covers a person whose incapacity results from mental disability, sleep, involuntary physical restraint,

or from the taking of rape drugs. Possession, use and/or distribution of any of these substances, including Rohypnol, Ketamine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another student is a violation of this policy. More information on these drugs can be found at <http://www.911rape.org/>

- Use of alcohol or other drugs will never function as a defense for any behavior that violates this policy.
- The sexual orientation and/or gender identity of individuals engaging in sexual activity is not relevant to allegations under this policy. For reference to the pertinent state statutes on sex offenses, please see [insert reference here].
- Sexual Abuse: The Iowa Code defines sexual abuse as follows: Any sex act between persons is sexual abuse by either of the persons when the act is performed with the other person in any of the following circumstances:
  - The act is done by force or against the will of the other. If the consent or acquiescence of the other is procured by threats of violence toward any person, or if the act is done while the other is under the influence of a drug inducing sleep or is otherwise in a state of unconsciousness, the act is done against the will of the other.
  - Such other person is suffering from a mental defect or incapacity which precludes giving consent, or lacks the mental capacity to know the right and wrong of conduct in sexual matters.
  - Such other person is a child.
- Discriminatory Harassment: In addition to sexual harassment defined above, the University prohibits harassment based on any other characteristic protected by law, including, race, color, national origin, creed, religion, age, disability, sex, gender identity and sexual orientation. Like sexual harassment, harassment based on one of these protected characteristics undermines the mission of the University through its detrimental impact on individual students, faculty and on the University community as a whole.
  - Prohibited harassment is conduct based on one or more of the above characteristics that has the purpose or effect of unreasonably interfering with an individual's work or educational performance or of creating an intimidating, hostile, or offensive environment for work or learning. Examples of the types of behavior that may lead to other discriminatory harassment include unwelcome conduct aimed at another because of a protected characteristic that would denigrate, distress, or humiliate a reasonable person, such as:
    - name-calling
    - jokes or negative comments about protected characteristics
    - physical intimidation
    - vandalism or pranks
    - displays of reading materials or pictures containing negative material about protected characteristics, including electronic materials.
 Any student, faculty or staff member who believes he or she has been subjected to other discriminatory harassment may follow the Sexual Harassment complaint procedures set forth above.
 

\*\*This definition is not intended to restrict usual standards of academic freedom.

- Intimate Partner Violence Policy: The Campus SaVE Act requires institutions of postsecondary education eligible to participate in federal student aid programs to adopt, and disclose in their annual security report a summary of, a policy regarding sexual assault (an existing requirement of the Clery Act) and other intimate partner violence. The term "intimate partner violence" is defined to mean "any physical, sexual, or psychological harm against an individual by a current or former partner or spouse of the individual". It includes stalking, dating violence, sexual violence, or domestic violence.

**New Reporting Categories for Clery:** Under VAWA's SaVE Act institutions are required to add three categories that must be reported under the Clery Act, if incidents are reported to campus security authorities or local police agencies. That's according to the American Council on Education's (ACE) "New Requirements Imposed by the Violence Against Women Reauthorization Act" summary (4/1/13). The three categories, as defined in the National Association of College and University Attorney's (NACUA) "A Brief Analysis of The Violence Against Women Act (VAWA) and Changes to the Clery Act & Title IX Compliance" document (March 2013), are:

1. **Dating Violence** –violence committed by a person
  - a. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  - b. where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - i The length of the relationship.
    - ii The type of relationship
    - iii The frequency of interaction between the persons involved in the relationship
2. **Stalking** –
 

Stalking is conduct directed at a specific person that would cause a reasonable person to feel fear and that significantly disrupts the person's work, educational performance, on-campus living, or participation in a university activity on or off campus.

A pattern of conduct perceived as threatening or harassing may violate university policy under a reasonable-person standard even if the person who commits the conduct did not intend to make the party feel threatened or harassed. A behavior pattern that the target of the conduct finds distressful may be considered a violation even if the target did not specifically direct the person who commits the conduct to refrain from contacting him or her.
3. **Domestic Violence** –felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

## Resources

Mount Mercy encourages all individuals who have been sexually abused to seek medical attention as well as emotional support. The University Health Services Office and University Counselor are available to assist students. Employees may seek assistance through



the University's EOO or Title IX Coordinator Employee Assistance Program.

## Campus Sexual Violence Elimination Act (Campus SaVE Act)

The Campus Sexual Violence Elimination Act or Campus SaVE Act (H.R. 6461) is a bill introduced in the 2nd session of the 111th Congress by Rep. Tom Perriello (D-VA 5th) and a bi-partisan group of 5 co-sponsors from across the country. The measure would amend the federal Jeanne Clery Act to update 18-year-old sexual assault policy requirements for institutions of higher education to also address a broader scope of intimate partner violence including stalking, dating violence, sexual violence/assault, and domestic violence offenses. The Campus SaVE Act also enhances existing prevention education and victims' rights provisions.

### Victims' Rights Provisions

The Campus SaVE Act establishes a baseline framework for institutions to respond to sexual assault and other intimate partner violence. Mount Mercy University policy will:

- Provide students and employees who report victimization information in writing of their rights to notify law enforcement and to be assisted by campus authorities in doing so, an explanation of their rights to obtain no contact orders or enforce an order already in existence, and contact information for campus and local advocacy, counseling, health, mental health and legal assistance services.
- Provide notification to students and employees who report victimization options for and assistance in changing academic, living, transportation and working situations if requested and reasonably available.
- Provide information for honoring any lawful no contact or restraining order.
- Disclose the range of possible sanctions that may be imposed following an institutional disciplinary procedure.
- Detail procedures victims should follow if a sex offense occurs, including who to contact and information about the importance of preserving physical evidence (an existing provision of the Clery Act).
- Disclose a summary of institutional disciplinary procedures that Accusers shall have the opportunity to request prompt proceedings, Proceedings shall be conducted by officials trained on sexual assault and other intimate partner violence issues, and shall use the **preponderance of the evidence** standard (which is "more likely than not" and the standard used by civil courts in the United States).
- Both accuser and accused are entitled to be accompanied to any related meeting or proceeding by an advisor of their choice, and that both must have the same opportunity to have others present during any proceeding.
- Both Complainant and Accused are entitled to be informed in writing of the final results within one business day of such outcome being reached.

### Victims' Protective Measures

Immediately after the Intake Meeting, the Title IX Coordinator will determine whether interim interventions and protective measure should be implemented, and, if so, take steps to implement those protective

measures as soon as possible. Examples of interim protective measures include: an order of no contact, residence hall relocation, adjustment of course schedules, a leave of absence, or reassignment to a different supervisor or position. These remedies may be applied to one, both, or multiple parties involved. Applicable law requires that, when taking such steps to separate the Complainant and the Accused Party, the University must minimize the burden on the Complainant and thus should not, as a matter of course, remove the Complainant from his or her job, classes or housing while allowing the Accused to remain. Violations of the Title IX Coordinator's directives and/or protective measures will constitute related violations that may lead to additional disciplinary action. Protective measures imposed may be temporary pending the results of an investigation or may become permanent.

Primary prevention is defined to mean programming and strategies intended to stop sexual and intimate partner violence before it occurs through the changing of social norms and other approaches. Awareness programming is defined to mean programs designed to communicate the prevalence of intimate partner violence including the nature and number of cases reported at each institution in the preceding 3 calendar years.

### Best Practices Report

The Campus SaVE Act provides for the collaboration of the U.S. Departments of Justice and Education to collect and disseminate best practices information about preventing and responding to sexual assault and other intimate partner violence.

### Counseling and Emotional Support

Helping the individual affected by the harassment regain control of his or her choices is an important goal for responding to a party complaining of harassment. If the person does not wish to make a complaint, he/she may talk to a member of the counseling staff, University Nurse, or the University Chaplain. Because these staff members are professionals with special requirements regarding confidentiality, they are not required to report the incident and will not report the incident unless the complainant decides to release the information. They can provide information and confidential support about choices resulting from sexual harassment or abuse. All other employees of the University are expected to assist in reporting the complaint to the Equal Opportunity Officer (EOO), currently the Director of Human Resources, or the Title IX Coordinator, also the Dean of Students & Director of Residence Life, as explained below.

### Training, Prevention, and Awareness Programs

The Campus SaVE Act updates requirements concerning awareness and prevention programming about sexual assault and other intimate partner violence. Mount Mercy University is committed to doing training and awareness programs for students as well as training for officials conducting disciplinary proceedings and/or investigations in a way that protects the safety of victims and promotes accountability. Mount Mercy University does this by:

- Prevention and awareness programming offered for all incoming students;
- Training on sexual harassment, Title IX, consent, and confidentiality for employees;
- Defining and educating student body on consent;

- Reporting sex offenses;
- Facilitating Bystander intervention trainings;
- Risk reduction education;
- Ongoing prevention and awareness campaigns including self-defense classes, seminars and trainings facilitated by local experts in the community, Title IX, Consent, and sexual harassment

## Reporting

Mount Mercy expects students, faculty, and staff to report allegations incidents of sexual misconduct. These may be reported either by the complainant, or by another person with the approval of the complainant, who shall serve as a liaison with the appropriate University personnel. This may be done without revealing the name of the complainant. The information will be kept confidential to the full extent permitted by law. The complainant is encouraged to report any incidents of alleged sexual abuse to the Cedar Rapids Police Department.

A person with a complaint may contact any trusted person (e.g. one of the deans, counselors, residence life staff, an academic advisor. This person will then assist the complainant in contacting the EOO or Title IX Coordinator. The EOO or Title IX Coordinator will maintain a record of and investigate any reported additional incidents.

## Confidentiality, Privacy and Reporting Policy

Institutions must clearly articulate who are “responsible employees” under Title IX for purposes of initiating notice and/or investigation, and those who have more discretion on how they act in response to notice of gender-based discrimination. Different people on campus have different reporting responsibilities and different abilities to maintain confidentiality, depending on their roles at the university and upon university policy.

When consulting campus resources, all parties should be aware of confidentiality, privacy and mandatory reporting in order to make informed choices. On campus, some resources can offer you confidentiality, sharing options and advice without any obligation to tell anyone unless you want them to. Other resources are expressly there for you to report crimes and policy violations and they will take action when you report your victimization to them. Most resources on campus fall in the middle of these two extremes. Neither the university nor the law requires them to divulge private information that is shared with them except in certain circumstances, some of which are described below. A victim may seek assistance from these university officials without starting a formal process that is beyond the victim’s control, or violates her/his privacy.

### **To Report Confidentially**

If one desires that details of the incident be kept confidential, they should speak with on-campus mental health counselors, campus health service providers or off-campus rape crisis resources who can maintain confidentiality. Campus counselors are available to help you free of charge, and can be seen on an emergency basis. In addition, you may speak on and off-campus with members of the clergy and chaplains, who will also keep reports made to them confidential.

### **Reporting to those who can maintain the privacy of what you share**

You can seek advice from certain resources who are not required to tell anyone else your private, personally identifiable information unless

there is cause for fear for your safety, or the safety of others. These are individuals who the university has not specifically designated as “responsible employees” for purposes of putting the institution on notice and for whom mandatory reporting is required, other than in the stated limited circumstances. These resources include those without supervisory responsibility or remedial authority to address sexual misconduct, such as RAs, faculty members, advisors to student organizations, career services staff, admissions officers, student activities personnel, and many others. If you are unsure of someone’s duties and ability to maintain your privacy, ask them before you talk to them. They will be able to tell you, and help you make decisions about who can help you best.

Some of these resources, such as RAs, are required to share incident reports with their supervisors, but they will not share any personally identifiable information about your report to other people unless you give permission, except in the rare event that the incident reveals a need to protect you or other members of the community. If your personally identifiable information is shared, it will only be shared as necessary with as few people as possible, and all efforts will be made to protect your privacy.

### **Non-confidential reporting options**

You are encouraged to speak to officials of the institution to make formal reports of incidents (deans, vice presidents, or other administrators with supervisory responsibilities, campus security, and human resources). The university considers these people to be “responsible employees.” Notice to them is official notice to the institution. You have the right and can expect to have incidents of sexual misconduct to be taken seriously by the institution when formally reported, and to have those incidents investigated and properly resolved through administrative procedures. Formal reporting means that only people who need to know will be told, and information will be shared only as necessary with investigators, witnesses, and the accused individual.

### **Federal Statistical Reporting Obligations**

Certain campus officials have a duty to report sexual assault, domestic violence, dating violence and stalking for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the annual Campus Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include: student/conduct affairs, campus law enforcement, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.

### **Federal Timely Warning Reporting Obligations**

Victims of sexual misconduct should also be aware that university administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. The university will make every effort to ensure that a victim’s name and

other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger. The reporters for timely warning purposes are exactly the same as detailed at the end of the above paragraph.

### **QUESTIONS AND ANSWERS**

Here are some of the most commonly asked questions regarding University's sexual misconduct policy and procedures.

- *Does information about a complaint remain private?*

The privacy of all parties to a complaint of sexual misconduct must be respected, except insofar as it interferes with the university's obligation to fully investigate allegations of sexual misconduct. Where privacy is not strictly kept, it will still be tightly controlled on a need-to-know basis. Dissemination of information and/or written materials to persons not involved in the complaint procedure is not permitted. Violations of the privacy of the complainant or the accused individual may lead to conduct action by the university. In all complaints of sexual misconduct, all parties will be informed of the outcome. In some instances, the administration also may choose to make a brief public announcement of the nature of the violation and the action taken, without using the name or identifiable information of the alleged victim. Certain university administrators are informed of the outcome within the bounds of student privacy (e.g., the President of the university, Dean of Students, Director of Security). If there is a report of an act of alleged sexual misconduct to a conduct officer of the university and there is evidence that a felony has occurred, local police will be notified.[1] (p. ) This does not mean charges will be automatically filed or that a victim must speak with the police, but the institution is legally required to notify law enforcement authorities. The institution also must statistically report the occurrence on campus of major violent crimes, including certain sex offenses, in an annual report of campus crime statistics. This statistical report does not include personally identifiable information.

- *Will my parents be told?*

No, not unless you tell them. Whether you are the complainant or the accused individual, the University's primary relationship is to the student and not to the parent. However, in the event of major medical, disciplinary, or academic jeopardy, students are strongly encouraged to inform their parents. University officials will directly inform parents when requested to do so by a student, in a life-threatening situation, [or if an accused individual has signed the permission form at registration which allows such communication].

- *Will the accused individual know my identity?*

Yes, if you file a formal complaint. Sexual misconduct is a serious offense and the accused individual has the right to know the identity of the complainant/alleged victim. If there is a hearing, the university does provide options for questioning without confrontation, including closed-circuit testimony, Skype, using a room divider or using separate hearing rooms.

- *Do I have to name the perpetrator?*

Yes, if you want formal disciplinary action to be taken against the alleged perpetrator. No, if you choose to respond informally and do not file a formal complaint (but you should consult the complete confidentiality policy above to better understand the university's legal obligations depending on what information you share with different university officials). Victims should be aware that not identifying the perpetrator may limit the institution's ability to respond comprehensively.

- *What do I do if I am accused of sexual misconduct?*

DO NOT contact the alleged victim. You may immediately want to contact someone who can act as your advisor; anyone may serve as your advisor. You may also contact the Student Conduct Office, which can explain the university's procedures for addressing sexual misconduct complaints. You may also want to talk to a confidential counselor at the counseling center or seek other community assistance. See below regarding legal representation. [2] (p. )

- *Will I (as a victim) have to pay for counseling/or medical care?*

Not typically, if the institution provides these services already. If a victim is accessing community and non-institutional services, payment for these will be subject to state/local laws, insurance requirements, etc.

- *What about legal advice?*

Victims of criminal sexual assault need not retain a private attorney to pursue prosecution because representation will be handled by the District Attorney's [Prosecutor's] office. You may want to retain an attorney if you are the accused individual or are considering filing a civil action. The accused individual may retain counsel at their own expense if they determine that they need legal advice about criminal prosecution and/or the campus conduct proceeding. Both the accused and the victim may also use an attorney as their advisor during the campus' grievance processes.

- *What about changing residence hall rooms?*

If you want to move, you may request a room change. Room changes under these circumstances are considered emergencies. It is typically institutional policy that in emergency room changes, the student is moved to the first available suitable room. If you want the accused individual to move, and believe that you have been the victim of sexual misconduct, you must be willing to pursue a formal or informal university complaint. No contact orders can be imposed and room changes for the accused individual can usually be arranged quickly. Other accommodations available to you might include:

- Assistance from university support staff in completing the relocation;
- Arranging to dissolve a housing contract and pro-rating a refund;
- Assistance with or rescheduling an academic assignment (paper, exams, etc.);
- Taking an incomplete in a class;
- Assistance with transferring class sections;
- Temporary withdrawal;
- Assistance with alternative course completion options;
- Other accommodations for safety as necessary.

- *What should I do about preserving evidence of a sexual assault?*

Police are in the best position to secure evidence of a crime. Physical evidence of a criminal sexual assault must be collected from the alleged victim's person within 120 hours, though evidence can often be obtained from towels, sheets, clothes, etc. for much longer periods of time. If you believe you have been a victim of a criminal sexual assault, you should go to the Hospital Emergency Room, before washing yourself or your clothing. The Sexual Assault Nurse Examiner (a specially trained nurse) at the hospital is usually on call 24 hours a day, 7 days a week (call the Emergency Room if you first want to speak to the nurse; ER will refer you). A victim advocate from the institution can also accompany you to Hospital and law enforcement or Security can provide transportation. If a victim goes to the hospital, local police

will be called, but s/he is not obligated to talk to the police or to pursue prosecution. Having the evidence collected in this manner will help to keep all options available to a victim, but will not obligation him or her to any course of action. Collecting evidence can assist the authorities in pursuing criminal charges, should the victim decide later to exercise it.

For the Victim: the hospital staff will collect evidence, check for injuries, address pregnancy concerns and address the possibility of exposure to sexually transmitted infections. If you have changed clothing since the assault, bring the clothing you had on at the time of the assault with you to the hospital in a clean, sanitary container such as a clean paper grocery bag or wrapped in a clean sheet (plastic containers do not breathe, and may render evidence useless). If you have not changed clothes, bring a change of clothes with you to the hospital, if possible, as they will likely keep the clothes you are wearing as evidence. You can take a support person with you to the hospital, and they can accompany you through the exam, if you want. Do not disturb the crime scene—leave all sheets, towels, etc. that may bear evidence for the police to collect.

- *Will a victim be sanctioned when reporting a sexual misconduct policy violation if he/she has illegally used drugs or alcohol?*

No. The severity of the infraction will determine the nature of the university's response, but whenever possible the university will respond educationally rather than punitively to the illegal use of drugs and/or alcohol. The seriousness of sexual misconduct is a major concern and the university does not want any of the circumstances (e.g., drug or alcohol use) to inhibit the reporting of sexual misconduct.

- *Will the use of drugs or alcohol affect the outcome of a sexual misconduct conduct complaint?*

The use of alcohol and/or drugs by either party will not diminish the accused individual's responsibility. On the other hand, alcohol and/or drug use is likely to affect the complainant's memory and, therefore, may affect the outcome of the complaint. A person bringing a complaint of sexual misconduct must either remember the alleged incident or have sufficient circumstantial evidence, physical evidence and/or witnesses to prove his/her complaint. If the complainant does not remember the circumstances of the alleged incident, it may not be possible to impose sanctions on the accused without further corroborating information. Use of alcohol and/or other drugs will never excuse a violation by an accused individual.

- *Will either party's prior use of drugs and/or alcohol be a factor when reporting sexual misconduct?*

Not unless there is a compelling reason to believe that prior use or abuse is relevant to the present complaint.

- *What should I do if I am uncertain about what happened?*

If you believe that you have experienced sexual misconduct, but are unsure of whether it was a violation of the institution's sexual misconduct policy, you should contact the institution's student conduct office or victim advocate's office. The institution provides non-legal advisors who can help you to define and clarify the event(s), and advise you of your options.