

## **SEXUAL MISCONDUCT POLICY & GRIEVANCE PROCEDURES**

---

### **POLICY STATEMENT**

Millikin University is committed to fostering and maintaining an atmosphere free from discrimination and sexual misconduct, including, sexual harassment, sexual violence, and other sexual misconduct and creating an inclusive campus for all members of the University community regardless of their sex, sexual orientation, or gender identity.

### **NON-DISCRIMINATION STATEMENT**

Consistent with the University's Non-discrimination Policy, Millikin University does not discriminate against any person in any of its education or employment programs and activities on any basis prohibited by applicable state or federal law, including on the basis of sex or gender. Sexual and gender-based harassment are prohibited and will not be tolerated in the University community.

### **SCOPE AND JURISDICTION**

This Policy applies to all employees, students, applicants, volunteers, vendors, guests, and other persons visiting Millikin's premises or while acting on behalf of Millikin.

The policy addresses discrimination on the basis of sex or gender as it relates to prohibited conduct committed by an employee, student, and third-party as listed above. Discrimination or harassment on the basis of actual or perceived race, color religion, national origin age disability status, genetics, protected veteran status or any characteristic prohibited by federal, state or local laws not covered by Title IX do not fall under this Policy (refer to policy 607 in the Employee Handbook). In addition, objectionable conduct that does not rise to the level of gender discrimination or harassment may be addressed through other remedial actions, education and/or conflict resolution mechanisms. For assistance, Employees should contact Human Resources and Students should contact the Dean of Student Development.

This Policy applies to prohibited conduct that occurs on campus or University owned, affiliated, or operated properties; in the context of any University-related or sponsored education program or activity, regardless of the location; through the use of University or provided technology resources.

Title IX Sexual Harassment applies to all of the University's education programs and activities whether such program or activity occurred on-campus or off-campus, as well as any building owned or controlled by a student organization that is officially recognized by the University (such as a fraternity or sorority house).

### **TITLE IX AND DISCRIMINATORY HARASSMENT**

Title IX of the Education Amendment of 1972 prohibits discrimination and harassment on the basis of sex in education programs and activities and employment. It covers not only equity in athletic programming, but all forms of discrimination based on sex. It protects students

and employees and applies to all institutions that receive federal funds, either directly or indirectly. Title IX states:

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

Millikin University is obligated to respond promptly, thoroughly and equitably when it learns of any form of potential sex/gender discrimination. The Title IX Coordinator is the compliance officer who will coordinate the University efforts of resolving complaints of sex/gender-based discrimination, harassment and sexual misconduct under Title IX. The Title IX Coordinator at Millikin University is Todd Ray, Director of Human Resources, and can be reached at:

**Title IX Coordinator**  
**Todd Ray; Chief Human Resources Officer**  
**Shilling Hall, Room 205 (217)362-6416**

[taray@millikin.edu](mailto:taray@millikin.edu)

The Title IX coordinator is authorized to designate Deputy Title IX Coordinators to investigate discrimination and harassment complaints as deemed appropriate.

**Title IX Deputy Coordinators:**

**For students:**

Wallace Southerland III	217-424-6395
Vice President, Student Affairs	

**For faculty, staff, visitors, or others:**

Tammy Maxwell	217-362-6416
Assoc. Director, Human Resources	

**REPORTING OPTIONS**

All students, employees, applicants and visitors are strongly encouraged to report any incidents of sexual harassment. Reports may be submitted by any person, in writing, or electronically, and may be submitted to the Title IX Coordinator or a Title IX Deputy Coordinator. Reports may also be made to any Supervisor, Department Chair or School Director, Dean, Director, Resident Director or Advisor, Athletic Director or Head Coach, Vice President, Human Resources and Student Affairs staff members, or Public Safety officials. Such personnel that receive reports of sexual harassment are required to forward those reports, along with all relevant details about the allegation, to the Title IX Coordinator or a Title IX Deputy Coordinator within 24 hours of receiving such a report.

Under the Final Rule, an official with authority is a Millikin employee who has "authority to institute corrective measures" and would therefore have "actual notice" when made aware of

potential policy violations. Once individuals receive a report, it is considered official notice to the University. Officials with authority at Millikin University include:

- Title IX Coordinator and Deputy Coordinators
- Any Human Resources professional
- Deans
- Directors
- Department Chairs
- Supervisors
- Provost and other Vice Presidents
- Athletic Director
- Head Coaches
- Director of Public Safety/Chief of Police
- Assistant Director of Public Safety/Deputy Chief of Police
- Board of Trustees Chairperson

**Make a confidential, electronic report** via the email address [TitleIX@millikin.edu](mailto:TitleIX@millikin.edu).

Reports submitted through this email address will be responded to within twelve (12) hours.

**Campus Conduct Hotline** - The University participates in a service called the **Campus Conduct Hotline** which accepts anonymous complaints 24 hours a day, seven days a week at **(866) 943-5787** toll-free or electronically via the CCH web portal @ [www.intouchwebsite.com/CCH1959](http://www.intouchwebsite.com/CCH1959).

### **Make a report to local Law Enforcement**

A complainant has the right to report, or decline to report, to law enforcement at any time. The University's investigation and adjudication processes are distinct from the criminal justice/ law enforcement process. Complainants have the option to pursue a criminal complaint with the appropriate law enforcement agency, to pursue a complaint with the University through its Investigation and Resolution Procedures or to pursue both processes consecutively or concurrently. The University will assist a Complainant in contacting law enforcement or the Complainant may contact them directly.

In addition to having the option of pursuing a criminal complaint, individuals also have the right to request that law enforcement issue emergency protective restraining orders or to pursue such orders through the court process. The University can assist parties who wish to do so. Reporting parties who receive emergency or permanent protective or restraining orders through a criminal or civil process should notify the Director of Public Safety so that the University can assist with managing compliance with the order on campus.

### **Timeframe for Reporting**

Complainants and witnesses are encouraged to report allegations of Sexual Harassment or prohibited conduct as soon as possible in order to maximize the University's ability to respond promptly and effectively. The University does not, however, limit the timeframe for reporting.

## **Duty To Report**

It is important to understand the responsibilities of university employees. All Millikin employees (faculty, staff, and administrators) are designated as Responsible Employees, meaning they are considered mandated reporters with a duty to promptly report any prohibited conduct that they observe, receive a report of, or otherwise obtain information about such conduct, to the Title IX Coordinator or a Deputy Coordinator. This includes employees who may have a professional license requiring confidentiality if they are not employed by the University in that professional role. Failure to cooperate with, or otherwise interfere with, an investigation conducted by, or on behalf of, the University is a violation of University policy and can be subject to disciplinary action.

## **Institutional Crime Reporting**

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the "Clery Act") requires institutions of higher education to compile and publish statistics on certain criminal offenses including sexual assault (i.e., non-consensual sexual intercourse), domestic and dating violence, and stalking that occur on or adjacent to school properties. Although the University strongly encourages everyone to report any crime that occurs on or around campus, the Clery Act requires certain crimes reported to Campus Security Authority (CSA) be included in those annual statistics. All crimes reported and documented under the Clery Act will be recorded in an anonymous manner that neither identifies the specifics of the crime nor the identity of the Reporting Party.

The University is also obligated to issue timely warnings of Clery Act crimes occurring within the relevant geography that represent a serious or continuing threat to students and employees. A Reporting Party under this policy will never be identified in a timely warning.

## **Mandatory Reporting of Child Abuse, Child Sexual Abuse, and Neglect**

In addition to the above reporting responsibilities, all University employees are mandated employees under the Illinois Abused and Neglected Children's Reporting Act. Any employee who becomes aware of or suspects child abuse and/or neglect of a child (under the age of 17) known to them in their professional capacity must report that information to the Illinois Department of Children and Family Services (DSFS). You may contact the hotline at 1-800-25-ABUSE or refer to the DCFS website at [www.state.il.us/dcf/FAQ/faq\\_can.shtml](http://www.state.il.us/dcf/FAQ/faq_can.shtml). Mandated reporters must also notify the Title IX Coordinator that a DCFS report has been made.

## **Confidential Resources**

If a student or employee has experienced an incident of discrimination or harassment but does not desire action by the University but would like to speak to a "CONFIDENTIAL" resource, they may contact **Growing Strong Sexual Assault Center** (who serves as Millikin's CONFIDENTIAL reporting resource) at 217/428-0700.

## **Amnesty**

Millikin University encourages reporting and seeks to remove any barrier to reporting by providing amnesty for reporting parties who report prohibited conduct for potential violations occurring at or near the time of the incident. In general, the University will not pursue

disciplinary action against a student reporter or witness to prohibited conduct for personal consumption of alcohol or other drugs (underage or illegal) which would otherwise be a violation of policy, provided the misconduct did not endanger the health or safety of others. The University does reserve the right to initiate an assessment or educational discussion or pursue other non-disciplinary options regarding alcohol or other drug use.

### **Requests for Anonymity**

Once a report has been shared with the Title IX Coordinator or Deputy Coordinator, a Complainant may request that their identity not be shared with the Respondent, that no investigation occur, or that no disciplinary action be pursued. The University will carefully balance this request along with its responsibility to take steps to provide a safe and non-discriminatory environment for all members of the campus community. Moreover, the ability of the University to investigate the complaint may be limited when the complainant refuses to participate in the investigation or wishes to remain anonymous. As necessary, the Title IX Coordinator reserves the right to initiate an investigation.

### **DEFINITIONS**

**Sexual Misconduct** encompasses many types of prohibited conduct, including, but not limited to: sexual harassment, sexual violence (including domestic or dating violence, sexual assault or stalking), gender-based harassment, sexual orientation harassment and sexual exploitation. Sexual misconduct is any unwelcome sexual contact or activity that occurs without the direct and verbal consent of any individual involved. Millikin University recognizes that sexual misconduct can be committed by or against individuals of the same sex/gender or different sexes/genders. Sexual misconduct can occur between strangers or acquaintances, as well as persons involved in intimate, sexual, dating, domestic or familial relationships. Such conduct may consist of repeated actions or may arise from a single incident if sufficiently severe. Sexual misconduct offenses covered by this policy include, but are not limited to, the following offenses:

- 1. Sexual Harassment**
- 2. Non-Consensual Sexual Contact (or attempts to engage in)**
- 3. Non-Consensual Sexual Intercourse (or attempts to engage in)**
- 4. Sexual Exploitation**

#### **Sexual Harassment**

Sexual harassment is any unwelcome communication or conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, written, online, and/or physical conduct of a sexual nature, when conduct satisfies one or more of the following conditions:

- Submission to or rejection of such conduct is made either implicitly or explicitly a condition of employment or academic standing or is used as the basis for employment decisions or for participation in any University program, activity or benefit or is used as a basis for evaluation in making academic or personnel decisions; (Quid Pro Quo); or

- Conduct determined by a reasonable person to be so severe, pervasive, and objectionably offensive that it effectively denies a person equal access to the University's education program or activity. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove; (Hostile environment); or
- "Sexual Assault" (as defined by the Clery Act), or Dating Violence, Domestic Violence or Stalking (as defined by the Violence Against Women Act).

Title IX Sexual Harassment applies when (i) the University has "actual knowledge" of the alleged sexual harassment, (ii) the alleged sexual harassment occurred in an education program or activity of the University; and (iii) the alleged sexual harassment was against a person physically located in the United States.

*Quid pro quo* harassment and Clery Act/VAWA offenses are not evaluated for severity, pervasiveness, offensiveness, or denial of equal access, because such misconduct is sufficiently serious to deprive a person of equal access.

Examples of possible Sexual Harassment may include:

- A professor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student accedes to the request.
- A student repeatedly sends sexually oriented jokes around on an email list s/he created, even when asked to stop, causing one recipient to avoid the sender on campus and in the residence hall in which they both live.
- Explicit sexual pictures are displayed in a professor's office or on the exterior of a residence hall door.
- Two supervisors frequently "rate" several employees' bodies and sex appeal, commenting suggestively about their clothing and appearance.
- A professor engages students in her class in discussions about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. She probes for explicit details, and demands that students answer her, though they are clearly uncomfortable and hesitant.
- An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend, turning him into a social pariah on campus.

**Sexual Assault** is any physical sexual act against any person, including any sexual intercourse or Sexual Contact, without consent or where the other person is incapable of giving consent due to incapacitation, age, family relation to the other person, or intellectual or other disability.

- **Non-Consensual Sexual Contact** includes any intentional sexual touching, however slight, of a person's breasts, buttocks, groin, genitals, or other intimate parts. Touching may be over or under clothing and may include the Respondent touching the

Complainant, the Respondent making the Complainant touch the Respondent or another person, or the Respondent making the Complainant touch the Complainant's own body.

- **Non-Consensual Sexual Intercourse** is any act of vaginal or anal penetration, however slight, by a person's penis, finger, other body part or an object, or, regardless of whether penetration occurs, any oral-genital contact.

**Sexual Exploitation** occurs when a person violates the sexual privacy of another or takes advantage of another person's sexuality without consent for the purpose of benefitting anyone other than the individual being exploited. Sexual exploitation also includes behavior that does not otherwise constitute one of the other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- Prostitution;
- Invasion of sexual privacy;
- Non-consensual visual (e.g., video, photograph) or audio-recording of sexual activity;
- Unauthorized sharing or distribution of digital, video, or audio recording of nudity or sexual activity;
- Engaging in voyeurism;
- Exceeding the boundaries of consent (such as letting your friend hide in the closet to watch you having consensual sex);
- Intentionally or recklessly exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals;
- Knowingly exposing someone to or transmitting a Sexually transmitted infection, Sexually transmitted disease, or HIV to another person;
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

## **GENDER-RELATED VIOLENCE**

In addition to the offenses of sexual misconduct discussed above, Title IX also governs gender-related violence. Gender-related violence is defined by any action (sexual or not) that is motivated by the gender-identity of the victim. Gender-related violence includes domestic violence, dating violence, and stalking.

**Domestic Violence** – Any act of abuse or violence committed by a family or household member. "Abuse" could be physical abuse, harassment or intimidation of a dependent.

**Dating Violence** – Abuse or violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim to maintain control over them. Violence can be between same sex or different sex partners and does not require sexual intimacy.

**Stalking** – A course of conduct directed at a specific person including repeated harassment, intimidation or threats that would cause a reasonable person to fear for their safety or the safety of others; or to suffer substantial emotional distress. This could be done by telephone, mail, electronic communication, social media, or other action, device, or method.

**ADDITIONAL APPLICABLE DEFINITIONS:**

**Consent** - is defined as clear, knowing, and voluntary words or actions that give permission for specific sexual activity – an unforced “YES” to the sexual act in question.

- Consent is active, not passive.
- Silence, in and of itself, cannot be interpreted as consent.
- Consent can be given in words or actions, as long as those words or actions create a mutually understandable permission regarding willingness to engage in (and the conditions of) sexual activity.
- Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another.
- 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.
- Consent can be withdrawn once given, as long as that withdrawal is clearly communicated.
- In order to give consent, one must be of legal age.
- Sexual activity with someone you know to be, or should know to be, incapacitated constitutes a violation of this policy.
  - Incapacitation – defined as a state in which an individual is unable to make a reasonable judgment concerning the nature or harmfulness of the activity because of his or her intoxication, unconsciousness, mental deficiency or incapacity. Specifically, incapacitation can occur mentally or physically, from developmental disability, by alcohol or other drug use, or blackout.

**Complainant** – An individual filing the complaint who is alleged to be the victim of conduct that could constitute sexual harassment.

**Respondent** – An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

**Formal Complaint** - Defined as a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the University investigate the allegation of sexual harassment.

**Actual Knowledge** - means notice of sexual harassment or allegations of sexual harassment to a University's Title IX Coordinator or any official of the school who has authority to institute corrective measure on behalf of the University. The mere ability or obligation to report sexual harassment or to inform others about how to report, does not qualify an individual as one who has authority to institute corrective measure on behalf of the institution.



**Education programs or activities** - under the regulations, includes locations, events or circumstances (operations) over which the University exercised substantial control over both the Respondent AND the context in which the sexual harassment occurred. Title IX applies to all of the University's education programs and activities whether such program or activity occurred on-campus or off-campus, as well as any building owned or controlled by a student organization that is officially recognized by the University (such as a fraternity or sorority house).

**Discrimination**, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of sex or gender.

**Coercion** is to force a person to act based on fear of harm to self or others. Means of coercion may include, but are not limited to, pressure, threats, emotional intimidation or the use of physical force. Coercion is unreasonable pressure for sexual activity. 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:** The presence of force is not demonstrated by the absence of resistance.)

**Other misconduct offenses that may fall under Title IX when sex or gender-based, include:**

**Hazing**, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the university community, when related to admission, initiation, pledging, joining, or any other group-affiliation activity.

**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.

**Cyber Bullying** is bullying through email, instant messaging, chat room exchanges, web site posts, or other electronic means. Cyber bullying, like traditional bullying, involves an imbalance of power, aggression, and a negative action that is often repeated.

### **Policy Expectations with Respect to Consensual Relationships**

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as faculty and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship may also be viewed in different ways by each party, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset of romantic or sexual involvement, this past consent may not remove grounds for a later charge of misconduct. For personal protection of members of this community, relationships in which a

power differential is inherent (faculty-student, staff-student, administrator-student, supervisor-supervisee) are generally discouraged.

Therefore, consensual sexual and amorous relationships will be considered unethical and are prohibited between a student and any member of the faculty or administrative staff who teaches, supervises, evaluates, or otherwise is in a position to exercise power or authority over the student. Efforts by members of the faculty or administrative staff to initiate these relationships are also prohibited.

Romantic or sexual relationships between a supervisor and a subordinate are also considered inappropriate. In the event that such relationships do occur, employees should self-report such relationships to a supervisor or Human Resources. Millikin University has the authority to transfer any involved employee to eliminate the supervisory authority of one over the other. Such action by the University is a proactive and preventative measure to avoid possible charges of harassment and does not constitute discipline against any affected employee.

### **INTERIM MEASURES**

Upon receipt of a report of Sexual Misconduct, the University will provide reasonable and appropriate interim measures designed to preserve access to educational opportunities; address safety concerns of the Complainant, the Respondent or broader University community; maintain the integrity of the investigation and/or resolution process; and defer retaliation. These actions may be **Supportive** or **Protective**.

- **Interim SUPPORTIVE Measures**

Supportive measures are non-punitive, non-disciplinary individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant before or after filing of a formal complaint or where no formal complainant has been filed. Support measures are also available for the Respondent. Such measures are designed to restore and preserve equal access to the University's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or deter sexual harassment. Supportive measures may include, but are not limited to:

- Facilitating access to counseling and health services;
- Referral to the Employee Assistance Program;
- Providing campus escorts;
- Implementing contact restrictions between the parties;
- Relocation of office and/or parking;
- Voluntary leave of absence;
- Altering work arrangements;
- Changes in housing locations and dining schedules;
- Modifications of work or class schedules;
- Extensions of deadlines or other course-related adjustments
- Referral to resources to assist in obtaining a protective order

- **Interim PROTECTIVE Measures**

Interim protective measures are only available when the University initiates an investigation as part of a disciplinary resolution. The University may make a preliminary, non-binding assessment to remove a respondent from campus on an emergency basis, provided the (i) the University undertakes an individualized safety plan and risk analysis; (ii) determines that an immediate threat to the physical health or safety of any student or individual arising from the allegations of sexual harassment justifies removal; and (iii) provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. The University may also place an employee respondent on administrative leave during the pendency of the grievance process. Interim Protective measures may include:

- Issuing a “no-contact” order
- Change in class schedule
- Change in work schedule or job assignment
- Exclusion from specified activities or areas of campus
- Any other protective measures that can be used to achieve the goals of this policy.

### **KNOW YOUR RIGHTS**

Complainant and Respondent shall both be provided with the following in connection with the investigation and resolution of suspected or alleged violations of this Policy:

- The opportunity to speak on their own behalf;
- The opportunity to identify or present witnesses to who can provide information about the alleged conduct;
- The opportunity to submit or identify other evidence on their behalf;
- The opportunity to suggest questions to be posed by the individual or individuals resolving the complaint and respond to the party;
- The opportunity to review any information offered by the other party in support of the other party’s position, as well as the opportunity to review a written investigation report summarizing all relevant exculpatory and inculpatory evidence and respond to that report in writing;
- Have timely and equitable access to any other information that will be used during an informal or formal disciplinary proceedings;
- The right to be accompanied by an advisor or support person of their choice at the proceedings and any related meeting;
- The right to be informed of the outcome of the investigation (to the greatest extent possible and consistent with FERPA or other applicable law);
- Periodic status updates;
- The opportunity to appeal the outcome of the investigation.

### **OVERVIEW OF THE RESOLUTION PROCESS**

The University is committed to providing a prompt, thorough, equitable, and impartial resolution of all reported violations of this Policy. The University uses two processes to resolve reports of Sexual Misconduct under this policy:

- **Informal Resolution** - includes an informal framework that includes restorative options for resolving reports that may not involve disciplinary action against a Respondent.
- **Formal Resolution** – includes formal procedures that involve an investigation, adjudication and if appropriate, the imposition of sanctions.

### **Intake/Initial Assessment.**

Upon receipt of a report of Sexual Misconduct, the Title IX Coordinator and/or Deputy Coordinator will take immediate and appropriate steps to investigate or otherwise determine what happened and work to resolve the matter promptly and equitably.

The first step is an Initial Assessment which will typically begin with a meeting between the Reporting Party (Complainant) and the Title IX Coordinator and/or Deputy Coordinator to:

- assess the nature and circumstances of the allegations;
- address any immediate concerns about the physical safety and emotional well-being of the parties;
- identify supportive and/or immediate preventive measures available (no contact, etc.) with or without filing a formal complaint;
- notify the reporting party of the option to notify law enforcement and be assisted in doing so, as well as the option to not notify law enforcement;
- provide the reporting party with information about the range of on-campus and off-campus resources and services;
- provide the reporting party with an explanation of the procedural options, including the process for filing a formal complaint and the option of an informal Resolution; the right to be accompanied by an advisor of their choice; the investigation and resolution process; and the need to preserve any relevant evidence or documentation in the case;
- Inform them of the University's policy prohibiting retaliation against parties who have filed a report, assisted, or participated in an investigation or proceeding under this policy; and
- assess whether there is a need for a timely warning or emergency notification under federal law.

As soon as practicable after the initial meeting with the Complainant, the Respondent will also be notified that a report or complaint alleging a violation of the policy has been made unless the University determines that it is not necessary or appropriate to move forward with the informal or formal resolution process.

At the conclusion of the initial assessment, the University finds the incident meets the definition of sexual harassment, they will proceed with one of the following options:

- (1) Proceed with an Informal Resolution. This will always require voluntary consent of the Complainant. The consent of the Respondent is also required.
- (2) Proceed with an investigation under the Formal Resolution process. This will occur when a Complainant requests an investigation, where the Title IX Coordinator or Deputy Coordinator determines to proceed with an investigation even when a

Complainant requests that no investigation be pursued, or where an Informal Resolution is not appropriate or available.

**Advisors or Support Persons.**

Both parties are allowed to bring an advisor of their choice to any meeting or interview in connection with proceedings. The advisor may be a friend, mentor, family member, attorney or any other supporter they choose. Witnesses cannot also serve as advisors. The role of the advisor of choice is limited to consulting privately with the party they accompany and conduct relevant cross-examination and questioning of the other party and any witnesses. If the advisor engages in behavior or advocacy that harasses, abuses, or intimidates either party, a witness, or an individual resolving the complaint, that advisor may be prohibited from further participation. At the request of either party, the Title IX Coordinator or designee can assist the parties to identify a University employee who is available to serve as an advisor.

**Conflict of Interest.**

The University requires any individual participating in the investigation, sanctioning or appeal of sexual misconduct matters to disclose any potential or actual conflict of interest. In cases where the Complainant or Respondent believes that an individual in this process may have a conflict of interest, they should notify the Title IX Coordinator or Deputy Coordinator.

**Informal Resolution.**

An informal resolution process is a voluntary and remedies-based resolution. Informal Resolutions are only allowed after a formal complaint is filed and if voluntarily agreed to by both parties in a written consent, except to resolve allegations that an employee sexually harassing a student. The University will work to informally resolve allegations of sexual misconduct by taking immediate and corrective action to stop the conduct, address its effects, and prevent recurrence without a formal investigation and determination of a University policy. The remedies may include the range of interim measures described above, as well as targeted and/or broad-based training and educational programming for relevant individuals and groups and/or any other remedy that will achieve the goals of the University's policy against Sexual Harassment and Misconduct. An informal resolution may also include an agreed upon resolution, which allows both parties to come to a mutual agreement regarding the resolution of the grievance.

- Information regarding Informal Resolution Procedures must be provided in the initial Notice of Allegations;
- Cannot be required;
- At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution and to resume the formal complaint process;
- Resolutions may encompass a broad range of conflict resolution strategies, including, but not limited to, mediation and/or restorative justice;
- Does not conclude with a finding of "responsible" or "not responsible" for a policy violation;
- Any party can pursue formal resolution if they are dissatisfied with a proposed informal resolution.

### **Formal Resolution Process.**

When a report of sexual misconduct cannot be informally resolved, a formal resolution will be initiated. The University will conduct a prompt and equitable investigation to gather information relevant to the determination of whether there is sufficient information, by a preponderance of the evidence, to determine that a policy violation occurred. The respondent is presumed to be "not responsible" for the alleged conduct until a determination is made. The investigation will be impartial and will be conducted by trained individuals who have no actual bias or conflict of interest.

- A "formal complaint" is defined as a document (paper, email or online submission) filed by a Complainant or signed by the Title IX Coordinator;
- Alleging sexual harassment against a Respondent, and;
- Requesting that the University investigate the allegation of Sexual Harassment.
- At the time of the filing of a formal complaint, the Complainant must be participating in or attempting to participate in the education program or activity of the University with which the formal complaint is filed.

### **Dismissal of a Formal Complaint.**

A formal complaint of sexual harassment under Title IX **must** be dismissed if:

- The conduct would not constitute sexual harassment as defined in the regulations, even if proven; or
- Did not occur in the University's education program or activity; or
- Did not occur against a person in the United States

A formal complaint of sexual harassment under Title IX **may** be dismissed if:

- The Complainant notifies the Title IX Coordinator and/or designee in writing that they would like to withdraw the formal complaint or allegations.
- The Respondent is no longer enrolled or employed by the University; or
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination.
- Upon a required or optional dismissal, the University will promptly and simultaneously send written notice to both parties.
- Upon dismissal, appeal rights will be offered to both parties.

### **Investigation.**

Upon receipt of a report of sexual harassment or upon notice of an incident of sexual harassment, the University shall conduct a prompt, thorough, and impartial investigation of the incident consistent with the applicable grievance procedures. Such investigation shall begin by providing both the complainant and the respondent with formal notice of the complaint. The written notice will include the following: (1) the identity of the parties involved, if known; (2) the specific section(s) of the University's policy allegedly violated; (3) the precise conduct allegedly constituting the alleged violation(s); and (4) the dates and location of the alleged incident(s) that gave rise to the allegations(s). If at any point additional violations are raised or the conduct allegedly constituting an alleged violation changes in a material way, the parties will receive additional notice of such changes.

When notified of the report or complaint, the Respondent will also receive a parallel discussion and written explanation of the options, rights, and responsibilities of the Responding Party, including the following:

- Information regarding the right to be accompanied during any meeting related to the matter by an advisor of their choice who participation will be limited to consulting privately with the Respondent;
- Information regarding the investigation and resolution process;
- Information regarding the need to preserve any relevant evidence or documentation in the case;
- Information about the range of available on-campus and off-campus resources and services, including confidential resources and services;
- Assistance in accessing these resources;
- Information regarding the range of interim protective measures and remedies available for security and support, including orders of no-contact, changes in academic, living, dining, transportation, and working situations, course adjustments and other forms of academic support;
- Notice that the University prohibits retaliation against parties who have filed a report, assisted, or participated in an investigation or proceeding under this policy.

The investigator(s) will undertake an investigation for the purposes of adjudicating whether the Respondent is responsible for the alleged violation(s) of the Policy. The investigation will include (i) reviewing any information gathered during the initial assessment, (ii) gathering and reviewing any additional relevant evidence, (iii) interviewing both the Complainant and Respondent, and (iv) identifying, locating and interviewing witnesses who have first-hand knowledge of the events. To help ensure a prompt and thorough investigation, both parties are encouraged to provide as much information as possible in connection with the investigation.

The Investigator will also seek to gather and analyze any relevant evidence pertaining to the complaint, such as text messages and postings, written communications, law enforcement records, hospital reports, and other relevant evidence.

Interviews may be conducted either with all parties physically present or with participants appearing virtually, with technology enabling them to see and hear each other in real time.

### **Cross Examinations.**

The Complainant and Respondent may not directly cross examine one another. Cross examinations must be conducted by an advisor and never by the party. Questions challenging credibility are allowed. Only relevant cross-examination and other questions may be asked of a party or witness. If an individual refuses to submit to cross examination, the decision-maker may not rely on any statement of that individual to determine responsibility.

Additionally, Complainants and Respondents:

- May provide written statements;

- Are encouraged to identify witnesses who can provide information about the alleged conduct at issue to be interviewed by the Investigator and /or present statements from such witnesses; however, the burden of collecting evidence and proving a violation of policy is on the recipient, not the parties;
- Are encouraged to submit or identify any other relevant evidence;
- There are no restrictions on the parties' ability to discuss the allegations or to gather and present relevant evidence;
- May have their advisor or support persons present with them during interviews and meetings conducted during the investigation; and
- Are encouraged to suggest questions for the Investigator to consider asking of the other party or other witnesses, and the reason they believe those questions would provide relevant information.

Timely notice will be provided to both parties of all interviews/meetings at which they may/must be present, and both parties will receive timely and equitable access to information.

The University will maintain documentation of the investigation or other proceedings, which can take various forms (e.g., notes, written findings of fact, transcripts, or audio recordings, etc.)

Questions or evidence that constitute, or seek disclosure of, or information protected under a legally recognized privilege, will not be required, allowed, or relied upon unless the person holding the privilege has waived the privilege (i.e. attorneys, priest, doctor, spousal).

Generally, evidence about the Complainant's and Respondent's sexual predisposition or prior sexual behavior are not relevant, unless offered to prove that someone other than the respondent committed the conduct alleged by the complainant. However, in limited circumstance, such as pattern evidence, it may be relevant in the determination of responsibility or, in the case of the respondent, assigning of a sanction.

### **Consolidation of Investigation.**

The University reserves the right to consolidate formal complaints when the allegations of sexual harassment arise out of the same facts or circumstances that are (i) against more than one respondent, (ii) by more than one complainant against one or more respondents, or (iii) by one party against the other party.

### **Preliminary and Final Investigation Reports.**

At the conclusion of the fact-gathering portion of the investigation, the investigator(s) will produce a preliminary investigative report that includes all facts gathered thus far in the investigation to the Title IX Coordinator/Deputy Coordinator. The Title IX Coordinator or Deputy Coordinator will then provide the Complainant and the Respondent equal and timely access to the preliminary report for their review. Each party will have the opportunity to provide any written comment or feedback, submit additional information identify additional



witnesses, and/or request the collection of other information by the investigator(s) within 5 business days.

The investigator will address any identified factual inaccuracies or misunderstandings as appropriate and determine whether to ask any additional questions of either party or any witness. Based on this information, as well as all information gathered during the investigation, the Investigator(s) will provide the Title IX Coordinator/Deputy Coordinator with a final investigation report, including a finding of responsibility or non-responsibility for each policy violation alleged and a rationale for each finding and shared simultaneously with the Complainant, Respondent and the appropriate University disciplinary authority in writing.

### **Standard of Proof.**

The Standard of Proof to be employed by the Investigator shall be the preponderance of the evidence: that is, based upon the information obtained during the investigation, it is more likely than not that one or more violations of the Policy occurred.

**Possible outcomes.** An investigation may result in one of the following findings:

1. **A determination that there is sufficient evidence to indicate a violation of this policy.**
2. **A determination that there is insufficient or no evidence to indicate a violation of this policy.** If the violation does not rise to the level of a Title IX Sexual Harassment violation but would fall under another conduct violation, objectionable conduct that does not rise to the level of gender discrimination or harassment under this policy, it may be addressed through other remedial actions, education and/or conflict resolution mechanisms.

### **Sanctions.**

If at the conclusion of the hearing the Respondent is found responsible for a violation of the policy (based upon the preponderance of the evidence), the investigation report will be forwarded to the appropriate University office for determination of sanctions. Sanctions may be imposed upon any member of the community found to have violated the Sexual Harassment and Misconduct Policy. Factors considered in sanctioning are defined in the Student Handbook, The Faculty P & P and the All Employee Handbook. Any sanctions imposed will be proportionate with the violation. In compliance with existing University policy, appropriate corrective action may range from counseling, written reprimands, suspensions, or other action, up to and including termination. The following are typical sanctions that may be imposed individually or a combination of sanctions may be imposed, and should not be perceived as an exhaustive list:

- A. In cases involving faculty members, corrective measures may be imposed in accordance with Policies and Procedures: Faculty; Section 2.4.5 Dismissal for Cause, 2.46 Action Short of Dismissal, and 2.5 Grievance Procedure.
- B. In cases involving students acting in their employment capacity, measures may be imposed in accordance with policy in the Student Employee handbook. In all other cases, measures may be imposed in accordance with the Standards of Conduct in the Student Handbook.
- C. In cases involving all administrative and staff employees, refer to Policy #601 Guidelines for Appropriate Conduct and #603 "Discipline and Corrective Action" in the Employee Handbook.

### **Possible Student Sanctions**

- Verbal or written warning
- Mandatory educational programming or projects
- Community Service
- Probation
- Removal from housing or other campus programs/activities/leadership positions
- Suspension from school or employment
- Organizational Sanctions
- Other Educational or Reparative Actions
- Expulsion, dismissal or other separation from the University
- Measures to protect health and safety, such as drug or alcohol counseling

### **Possible Employee Sanctions**

- Verbal or written warning
- Disciplinary probation
- Suspension (with or without pay)
- Performance Improvement Plan
- Termination of employment
- Mandatory Educational training
- Adjustment of supervisory responsibilities
- Measures to protect health and safety, such as drug or alcohol counseling
- Sanctions of a faculty member will be implemented in a manner consistent with the requirements of Title IX and the Clery Act.

**Conclusion of the investigation.** It is the goal of the University to have all complaints investigated and concluded within sixty (60) days of the initial complaint being filed. If this is not reasonably possible due to extenuating circumstances, the Title IX Coordinator or Deputy Coordinator should inform the complainant and respondent of the status of the review and an estimated conclusion date.

Criminal investigations or proceedings may have some impact on the timing of the University's investigation, but the University will commence or resume its own investigation as soon as is practicable under the circumstances. The university reserves the right to

commence and/or complete its own investigation prior to the completion of any criminal investigator or proceeding. In the event that an internal complaint is also being investigated by law enforcement, the University will comply with law enforcement's request for cooperation and such cooperation may require the University to defer the fact-finding aspect of the investigation while the law enforcement agency gathers evidence. During this time, the Title IX Coordinator or designee will provide updates on the status and will take any additional measures necessary to protect and support the parties and the University community.

**Outcome of Investigation.** The University shall provide the complainant and the respondent with written notice of the outcome of the investigation (i.e. whether sexual harassment was found to have occurred) simultaneously within five (5) business days of such finding being made. The notice will include:

- The finding, by a preponderance of the evidence, as to whether or not a policy violation occurred;
- The rationale for the finding;
- If there was a finding of responsibility, the sanctions imposed on the Respondent that directly relates to the Complainant;
- Information about the appeal process.

**Complaints to Administrative Agencies.**

Regardless of the method of resolution or the outcome, Complainants may choose to pursue their complaints through the criminal and/or civil courts, with the Illinois Department of Human Rights (IDHR) or the Equal Employment Opportunity Commission (EEOC), or the United States Department of Education (Office of Civil Rights), in addition to, or instead of, the University's process. Complainants are encouraged to utilize the resources available through Growing Strong or other legal advocates and may wish to consult with an attorney.

**Appeal Rights.** The complainant and the respondent have the right to appeal. Appeals must be filed with the Title IX Coordinator within five (5) business days from receiving the decision. The appeal must be written and contain:

- the name of the Complainant
- name of the Respondent
- A statement of the determination of the complaint, including corrective action, if any
- Must be written and state the grounds for the appeal, provide any supporting documentation and include information and arguments relevant to the grounds for the appeal.

**Grounds for Appeal**

An appeal is not a re-hearing and must clearly demonstrate one of the following elements:

- A procedural irregularity that affected the outcome;

- New evidence that was not reasonably available at the time the determination or dismissal was made and could affect the outcome; or
- The sanction(s) was clearly disproportionate with the violation.

The Title IX Coordinator will forward to the appropriate individual as listed below:

- Appeals involving students will be heard following the Standards of Conduct in the Student handbook.
- Appeals for Faculty members will be heard by the Provost.
- Appeals for Administrative and Staff employees will be heard by the Executive Vice President and Chief Strategy Officer.

The finding will be in writing and provided simultaneously to both parties, will be final, and cannot be appealed. The appeals officer will typically render a written decision to all parties within five (5) business days from receiving the appeal.

### **CONFIDENTIALITY**

The University wishes to create a safe environment in which individuals are not afraid to discuss concerns. Therefore, the University will maintain the confidentiality of the complaint to the greatest extent possible and on a need-to-know basis, consistent with the law and the University's goal of conducting a thorough and complete investigation. Efforts will be made to safeguard the privacy and rights of all persons involved. All individuals involved in the process should observe the same standard of discretion and respect for the reputation of everyone involved in the process.

### **RETALIATION**

It is a violation of University policy and is prohibited for any person to retaliate against, interfere with, coerce, or take any other adverse action against a student, faculty member, staff member, applicant or other third party that (i) seeks advice concerning sexual harassment; (ii) makes a report or complaint of sexual harassment; (iii) assists or supports another individual that makes a report of sexual harassment; (iv) participates as a witness or in the investigation of a sexual harassment report; or refuses to participate in an investigation. Such conduct is a serious violation that can subject the offender to sanctions independent of the merits of the allegation. Allegations of retaliation should be directed to the Title IX Coordinator or a Title IX Deputy Coordinator.

### **ADDITIONAL POLICY PROVISIONS**

#### **False Allegations**

It is a violation of this policy to make a report of sexual harassment that is known to be false. Any member of the University community who knowingly files a false complaint of discrimination or harassment, or who knowingly provides false information or intentionally misleads any University official who is investigating a complaint, will be investigated and adjudicated accordingly.

## **Academic Freedom**

Millikin University is committed to the principles of academic freedom. This policy is not intended to stifle teaching methods or infringe upon academic freedom. Academic freedom in teaching is fundamental to protecting the right of the faculty member in teaching and the student in learning. The protections of academic freedom must be carefully considered in all reports of sexual harassment/misconduct involving faculty. The fact that speech or a particular expression is offensive is not, standing alone, a legally sufficient basis to establish a violation of this policy. If such speech or expression takes place in the teaching context, it must also be persistent, pervasive, and not germane to the subject matter in order to be sexual harassment under this policy. The academic setting is distinct from the workplace in that wide latitude is required for professional judgment in determining the appropriate content and presentation of academic material.

## **COUNSELING AND SUPPORT SERVICES**

Any person seeking counseling or support services may contact any of the following:

- Millikin University Public Safety 217.464.8888
- Decatur Police 911
- Growing Strong Sexual Assault Center 217.428.0770
- DOVE Domestic Violence Advocacy Center 217.423.2238
- Decatur Memorial Hospital 217.876.8121
- National Domestic Violence Hotline 800.799.SAFE(7233)
- National Sexual Assault Hotline 800.656.HOPE(4673)

### **For Employees:**

- Employee Assistance Program (EAP): free confidential counseling for University employees, as well as their dependents, through LifeWorks. To speak with a counselor or to schedule an appointment with a local counselor, call 877.234.5151 toll-free.

### **For Students:**

- HSHS Medical Group & Counseling Center at MU 217.424.6360
- Millikin Office of Student Affairs 217.424.6395

## **TRAINING AND EDUCATION**

The University will provide training and education programming designed to promote the awareness of Sexual Harassment and Sexual Misconduct. The training will include how to identify and report sexual harassment. Specific training will be provided for those individuals who have responsibility for investigating and adjudicating alleged violations of this policy.

Training:

- **Officials with Responsibility for Investigating or Adjudicating Alleged Violations**

- Title IX The University will provide officials with responsibility for the investigation or adjudication of misconduct under this Policy with annual training regarding sexual harassment and misconduct including, but not limited to:
  - The University's policy;
  - The relevant federal and state law concerning sexual harassment, sexual violence, domestic violence, dating violence, and stalking;
  - The types of conduct that constitute sexual harassment, sexual violence, domestic violence, dating violence, and stalking;
  - Training on at least an annual basis on how to conduct an investigation and hearing process that protects the safety of all participants and promotes accountability;
  - Consent and the role drugs and alcohol use can have on the ability to consent;
  - Trauma-informed response training.
- **Primary Prevention and Awareness**
  - All new employees and incoming students will receive prevention and awareness training.
- **Ongoing Prevention and Awareness**
  - The University will also provide ongoing prevention and awareness training for all students and employees.
  - Special trainings also held for specific groups or departments with particular Title IX concerns (i.e. resident assistants, fraternity and sorority groups, student athletes and coaches).

### **Sexual Assault Task Force**

The Sexual Assault Regional Task Force meets bi-annually to discuss campus and community resources available to prevent or mitigate the impacts of general and sexual violence within our community. This multi-jurisdictional committee is intended to ensure our campus fully utilizes the resources available within our community. Members include: Public Safety Director, Title IX Coordinator; VP for Student Affairs, Dean of Student Affairs, community based members from Dove and Growing Strong, and members from local law enforcement.

**EFFECTIVE DATE:** July 1, 2023.