
 <b>POLICY / PROCEDURE</b>	<b>Original Effective Date:</b>	<b>Review Dates:</b>	<b>Revision Dates:</b>
	8.1.25		09.29.25
	<b>Approved By:</b> 		
	<b>Department:</b> Human Resources		
<b>Subject: Title IX Policy - Sexual Harassment</b>			<b>Page 1 of 34</b>

## Section 1: Introduction

**1.1 Policy Statement:** Millikin University is committed to creating and maintaining a learning and working environment that is free from unlawful discrimination based on sex in accordance with Title IX of the Higher Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in education programs or activities; Title VII of the Civil Rights act of 1964 (Title VII), which prohibits sex discrimination in employment; and the Campus Sexual Violence Elimination Act, Clery Act, and the Violence Against Women Act (VAWA). Sexual Harassment and Retaliation under this Policy will not be tolerated by Millikin University and is grounds for disciplinary action, up to and including, permanent dismissal from Millikin University and/or termination of employment.

**1.2 Purpose:** Millikin University takes all reported sexual harassment seriously. Millikin University will promptly discipline any individuals within its control who are found responsible for violating this Policy. Additionally, reported sexual misconduct, harassment, and retaliation that does not meet the definitions and jurisdiction of this policy will be referred for review under the University Standards of Conduct process in compliance with VAWA and Clery Act.

**1.3 Applicability:** This Policy applies to students and employees as follows:

- a. **To Students:** Where the Respondent is a student at Millikin University the time of the alleged conduct, the alleged conduct includes Sexual Harassment or Prohibited Conduct under this Policy, the alleged conduct occurs in Millikin University's Education Program and Activity, the alleged conduct occurs against a person in the United States, and the Complainant is participating in or attempting to participate in Millikin University's Education Program or Activity.
- b. **To Employees:** Where the Respondent is an employee at Millikin University at the time of the alleged conduct, where the alleged conduct includes Sexual Harassment or Prohibited Conduct under this Policy, the alleged conduct occurs in Millikin University's Education Program and Activity, the alleged conduct occurs against a person in the United States, and the Complainant is participating in or attempting to participate in Millikin University's Education Program or Activity.

**1.4 Title IX Coordinator and Key Title IX Officials:** The Title IX Coordinator is the Millikin University administrator who oversees Millikin University's compliance with Title IX.

The Title IX Coordinator is responsible for administrative response to reports and Formal Complaints of Sexual Harassment. The Title IX Coordinator is available to discuss the grievance process, coordinate supportive measures, explain Millikin University's policies and procedures, and provide education on relevant issues. The Title IX Coordinator may designate the Deputy Title IX Coordinator or one or more Title IX Specialists to facilitate these responsibilities.

Any member of the Millikin University community may contact the Title IX Coordinator with questions. Title IX Coordinator, Deputy Title IX Coordinator, and Title IX Specialist contact information are as follows:

Todd Ray, Title IX Coordinator  
Email: [taray@millikin.edu](mailto:taray@millikin.edu)  
Office: Shilling 205  
Phone: 217-362-6416

Wallace Southerland, VP of Student Affairs and Deputy Title IX Coordinator  
Email: [wsoutherland@millikin.edu](mailto:wsoutherland@millikin.edu)  
Office: University Commons, 3<sup>rd</sup> Floor  
Phone: 217-424-6395

Brittany Gates, Title IX Specialist  
Email: [bgates@millikin.edu](mailto:bgates@millikin.edu)

In addition to the above roles, Millikin University appoints investigators, decision-makers and informal resolution facilitators who have roles in the formal grievance process more fully explained in Sections 6 and 8 of this policy.

The Title IX Coordinator, Deputy Title IX Coordinator, Title IX Specialists, investigators, decision-makers, and informal resolution facilitators will receive annual training in compliance with Title IX. All administrators in these roles will not rely on sex stereotypes and will provide impartial investigations and adjudications of Formal Complaints of Sexual Harassment. All materials used to train these administrators will be publicly made available on Millikin University's website in accordance with Title IX requirements.

The Title IX Coordinator, Deputy Title IX Coordinator, Title IX Specialists, investigators, decision-makers, and informal resolution facilitators shall not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

**1.5 Notification:** Millikin University will use electronic mail (e-mail) for purposes of communication and notification under this Policy.

**1.6 Free Speech:** Freedom of speech and principles of academic freedom are central to the mission of institutions of higher education. Constitutionally protected expression cannot be considered Sexual Harassment under this Policy.



**1.7 Dissemination of Policy:** This Policy will be made available to all Millikin University administrators, faculty, staff, and students online at <https://www.millikin.edu/about/administration/human-resources/title-ix> and in Millikin University student handbook and any employee handbook of operating procedures.

**1.8 Effective Date:** The effective date of this Policy is August 1, 2025.

**1.9 Retaliation and False Statements Prohibited:** Neither Millikin University nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this Policy or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy.

- a. Alleged violations of Retaliation will be referred to an investigation process outlined in Section 11 of this policy.
- b. The exercise of rights protected under the First Amendment does not constitute Retaliation prohibited under this Policy.
- c. Charging an individual with a Code of Conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy does not constitute Retaliation prohibited under Policy. However, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

**1.10 Amnesty:** Reporting sexual harassment, harassment, discrimination, and related inappropriate conduct is encouraged at Millikin University. Thus, it is imperative that parties and witnesses share information without fear of potential consequences for certain violations of the student code of conduct including, but not limited to, underage drinking or possession or use of a controlled substance, that is revealed in the course of such a report, unless the University determines that the violation was egregious, including without limitation an action that places the health or safety of any other person at risk .

Millikin University offers parties and witnesses amnesty from such violations, but individuals may be responsible for other, more serious conduct that does harm or place the health or safety of any other person at risk. After granting Amnesty, Millikin University may offer educational or therapeutic opportunities for individuals in lieu of a finding of responsibility or punitive sanctions with the student regarding alcohol or controlled substances. This Section does not apply to reports to the police; rather, it applies only to discipline for violations of Millikin University's Code of Conduct.

**1.11 Other University Policies:** This Policy takes precedence over other University policies and procedures concerning Sexual Harassment under Title IX in the event of a conflict.

**1.12 Modification and Review of this Policy:** Millikin University reserves the right to modify this Policy to take into account applicable legal requirements. Millikin University will regularly review this Policy to determine whether modifications should be made.

**1.13 Additional Code of Conduct or Millikin University Policy Violations:** Alleged violations of the student Code of Conduct or employee Standards of Conduct and/or the University Standards of Conduct that arise from the same events as alleged sexual misconduct under this Policy will be investigated and resolved under the grievance process in this Policy unless the Sexual Harassment has been dismissed under Section 5.2 of this Policy.

**1.14 Standard of Proof:** The burden rests with the University to prove that a violation of this Policy occurred by a Preponderance of the Evidence (more likely than not) standard.

## **Section 2: Definitions**

### **2.1 Definitions of Prohibited Conduct Under this Policy<sup>1</sup>**

**2.1.1 Sexual Harassment** means conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a Reasonable Person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity<sup>2</sup>; or
- (3) Sexual Assault, Dating Violence, Domestic Violence or Stalking as defined in this Policy.

**2.1.2 Sexual Assault** means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation, including Rape, Fondling, Incest, and Statutory Rape as defined in this Policy.

**2.1.3 Rape<sup>3</sup>** means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the Consent of the victim.

**2.1.4 Fondling<sup>4,5</sup>** means the intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification,

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<sup>1</sup> See Section 12 for Illinois State Laws related to Illinois State Law Definition.

<sup>2</sup> A severe, pervasive, and objectively offensive assessment includes, but is not limited to, a consideration of the frequency of the offensive conduct, the nature of the unwelcome sexual acts or words, such as whether the harassment was physical, verbal, or both; whether the harassment was merely an offensive utterance; and the number of victims involved and the relationship between the parties including, but not limited to, the ages of the harasser and the victim. In evaluating whether conduct is severe, pervasive, and objectively offensive, Millikin University will look at the totality of the circumstances, expectations, and relationships.

<sup>3</sup> Rape as defined in the Uniform Crime Reporting Program (UCR) includes:

Forcible Rape: The carnal knowledge of a person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her temporary or permanent or physical incapacity.

Forcible Sodomy: Oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

Sexual Assault with an Object: To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against that person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

<sup>4</sup> Fondling is referred to as Forcible Fondling in the UCR.

<sup>5</sup> Referred to in the NIBRS as "Criminal Sexual Contact"

or sexual humiliation. The forced touching by the victim of the actor's clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

**2.1.5 Incest<sup>6</sup>** means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

**2.1.6 Statutory Rape<sup>7</sup>** means sexual intercourse with a person who is under the statutory age of Consent.

**2.1.7 Dating Violence** means 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:

- The length of the relationship,
- The type of relationship,
- The frequency of interaction between the persons involved in the relationship.

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

**2.1.8 Domestic Violence<sup>8</sup>** includes felony or misdemeanor crimes of violence committed by:

- (1) a current or former spouse or intimate partner of the victim,
- (2) a person with whom the victim shares a child in common,
- (3) a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
- (4) a person similarly situated to a spouse of the victim under the State's domestic or family violence laws, or
- (5) any other person against an adult or youth victim who is protected from that person's acts under the State's domestic or family violence laws.

**2.1.9 Stalking** means engaging in a Course of Conduct directed at a specific person that would cause a Reasonable Person to—

- fear for his or her safety or the safety of others; or
- suffer Substantial Emotional Distress.

## **2.2 Definitions Related to Sexual Harassment: Consent, Course of Conduct, Incapacitation, Reasonable Person, Substantial Emotional Distress**

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<sup>6</sup> Incest is a Nonforcible Offense in the UCR.

<sup>7</sup> Statutory Rape is a Nonforcible Offense in the UCR.

<sup>8</sup> See Section 12 for Applicable Illinois State Laws.

**2.2.1 Consent** is affirmative, conscious, voluntary, and revocable. Consent to sexual activity requires of each person an affirmative, conscious, and voluntary agreement to engage in sexual activity.

It is the responsibility of each person to ensure they have the affirmative Consent of the other to engage in the sexual activity. Lack of protest, lack of verbal or physical resistance, or silence do not, alone, constitute Consent in general or as a result of the use of threat or force. Affirmative Consent must be an ongoing and freely given agreement to sexual activity and can be revoked at any time during sexual activity.

The existence of a dating relationship or past sexual relations between the Complainant and Respondent will never by itself be assumed to be an indicator of Consent (nor will subsequent sexual relations or dating relationship alone suffice as evidence of Consent to prior conduct). A person consenting to sexual activity with one person does not constitute Consent to future sexual activity. A person's manner of dress does not constitute Consent.

The Respondent's belief that the Complainant consented will not provide a valid defense unless the belief was actual and reasonable. In making this determination, the decision-maker will consider all of the facts and circumstances the Respondent knew, or reasonably should have known, at the time. In particular, the Respondent's belief is not a valid defense where:

- (1) The Respondent's belief arose from the Respondent's own intoxication or recklessness;
- (2) The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively Consented; or
- (3) The Respondent knew, or a reasonable person should have known that the Complainant was unable to Consent because the Complainant was incapacitated, in that the Complainant was:
  - asleep or unconscious
  - unable to understand the fact, nature, or extent of the sexual activity due to the influence of drugs, alcohol, or medication
  - unable to communicate due to a mental or physical condition
  - under the age of consent.

**2.2.2 Course of Conduct** means two or more acts, including, but not limited to, acts in which the individual directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.

**2.2.3 Incapacitation** means that a person lacks the ability to actively agree to sexual activity because the person is asleep, unconscious, under the influence of alcohol or other drugs such that the person does not have control over their body, is unaware that sexual activity is occurring, or their mental, physical or developmental abilities render them incapable of making rational informed decisions. Incapacitation is a state beyond

drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking, using drugs, or taking medication.

A person violates this policy when they engage in sexual activity with another person who is Incapacitated and a Reasonable Person in the same situation would have known that the person is Incapacitated. Incapacitation can be voluntary or involuntary. Signs of Incapacitation may include, without limitation: sleep; total or intermittent unconsciousness; lack of control over physical movements (e.g., inability to dress/undress without assistance; inability to walk without assistance); lack of awareness of circumstances or surroundings; emotional volatility; combativeness; vomiting; incontinence; unresponsiveness; and inability to communicate coherently. Incapacitation is an individualized determination based on the totality of the circumstances.

**2.2.4 Reasonable Person** means a reasonable person under similar circumstances and with similar identities to the Complainant.

**2.2.5 Substantial Emotional Distress** means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

## **2.3 Other Defined Terms**

**2.3.1 Actual Knowledge** means Notice of Sexual Harassment allegations to the Title IX Coordinator or any Official with Authority, except that actual knowledge is not met when the only individual with actual knowledge is the Respondent.

**2.3.2 Business Day** means any weekday not designated by Millikin University as a holiday or administrative closure day. When calculating a time period of Business Days specified in this Policy, the Business Day of the event that triggers a time period is excluded.

**2.3.3 Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment. Complainants and Respondents are referred to collectively as “parties” throughout this Policy.

**2.3.4 Confidential Employee** means an individual who will not report any information about an incident to the Title IX Coordinator without the Complainant’s permission.

**2.3.5 Confidential Advisor:** means a person who is employed or contracted by a higher education institution to provide emergency and ongoing support to student survivors of sexual violence with the training, duties, and responsibilities described in Section 20 of the Illinois Preventing Sexual Violence in Higher Education Act.

**2.3.6 Disciplinary Sanctions** are imposed only after a finding of responsibility through the grievance process or an agreement through the informal resolution process.

**2.3.7 Education Program or Activity** includes locations, events, or circumstances over which Millikin University exercises substantial control over both the Respondent and the context in which the Sexual Harassment occurs. This includes conduct that occurs on Millikin University property, during any Millikin University activity, or in any building owned or controlled by a student organization that is officially recognized by Millikin University.

**2.3.8 Formal Complaint** means a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that Millikin University investigate the allegation of Sexual Harassment.

**2.3.9 Official with Authority** means an individual who has the authority to institute corrective measures and is required to report Sexual Harassment to the Title IX Coordinator to initiate Millikin University's response to the Sexual Harassment allegations. Officials with Authority include:

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

A pattern of failing to follow through with the reporting responsibilities of an Official with Authority will result in disciplinary action.

**2.3.10 Remedies** are designed to restore or preserve equal access to Millikin University's Education Program or Activity. Remedies may include, but are not limited to, the same individualized services as Supportive Measures; however, Remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

**2.3.11 Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. Complainants and Respondents are referred to collectively as "parties" throughout this Policy.

**2.3.12 Responsible Employee** means any individual who is employed by Millikin University and not deemed to be a Confidential Employee or Officials with Authority. Responsible Employees are expected by Millikin University to report Sexual Harassment to the Title IX Coordinator promptly upon receiving a report of a Sexual Harassment.



A pattern of failing to follow through with the reporting responsibilities of a Responsible Employee will result in disciplinary action.

**2.3.13 Retaliation** means intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or Sexual Harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or Formal Complaint of Sexual Harassment, for the purpose of interfering with any right or privilege secured by Title IX or this Policy.

**2.3.14 Supportive Measures** means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed.

Such measures are designed to restore or preserve equal access to Millikin University's Education Programs or Activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or Millikin University's educational environment, or deter sexual harassment.

Supportive measures may include, but are not limited to, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

### **Section 3: Reporting Sexual Harassment and Preservation of Evidence**

#### **3.1 Reporting to Millikin University**

**3.1.1 Reporting to Title IX Coordinator:** Reports of Sexual Harassment may be made to the Title IX Coordinator in any of the following ways, by anyone, at any time: email, phone, online form, mail. Reports may be made to the Title IX Coordinator in person at Shilling Administration Building, Suite 205. After Title IX Sexual Harassment has been reported to the Title IX Coordinator, the Title IX Coordinator will promptly offer supportive measures to the Complainant, regardless of whether the Complainant was the reporter of the Sexual Harassment.

**3.1.2 Reporting to Officials with Authority:** If Officials with Authority are notified of Sexual Harassment, they shall promptly report such Sexual Harassment to the Title IX Coordinator who will take immediate action under this Policy.

**3.1.3 Reporting to Confidential Employees:** Millikin University employees who work in the offices listed below are considered Confidential Employees when they are operating under their respective licenses at the time the information was received.

Reports made to Confidential Employees under this definition are considered confidential reports and will not be reported to the Title IX Coordinator without the Complainant's permission and will not constitute actual notice to Millikin University<sup>9</sup>. Confidential employees at Millikin University include the following:

Licensed clinicians, counselors, and therapists in Counseling Services within Student Mental and Behavioral Health.  
217-424-6360

Reports made to confidential employees are considered confidential reports. The confidential employee must explain the following to a person who informs them of conduct that reasonably may constitute sex discrimination.

- (1) The employee's status as confidential for purposes of this policy, including any circumstances in which the employee is not required to report to the Title IX Coordinator;
- (2) How to contact the Title IX Coordinator and how to make a complaint of sex discrimination; and
- (3) That the Title IX Coordinator may be able to offer and coordinate supportive measures, as well as initiate an information resolution or an investigation under the grievance procedures.

The Confidential Advisor as explained in 2.3.5 of this Policy is Growing Strong Sexual Assault Center. Millikin University works directly with Growing Strong Sexual Assault Center to provide Confidential Advisors or other advocates for students and employees.

Contact Information for the Confidential Advisor Growing Strong is below:  
270 West Prairie Avenue  
217-428-0770  
<http://www.growingstrongcenter.org>

**3.1.4 Reporting to Responsible Employees:** Millikin University employees who are not Confidential Employees or Officials with Authority are expected to report alleged Sexual Harassment to the Title IX Coordinator promptly upon receiving a report of Sexual Harassment.

**3.1.5 Anonymous Reporting:** Anonymous reports may be made by email to TitleIX@millikin.edu. A decision to remain anonymous, however, may greatly limit Millikin University's ability to stop the alleged conduct, collect evidence, or take action against parties accused of violating this Policy.

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<sup>9</sup> This does not preclude the requirement under IL state law that all employees notify child protective services and/or law enforcement of suspected abuse of a minor under the age of 18.

### **3.2 Reporting to Public Safety & Law Enforcement Personnel:**

Reports may be filed with Millikin Public Safety personnel or local law enforcement. The Title IX Coordinator or designee can assist with contacting Public Safety personnel or law enforcement agencies. Law enforcement investigations are separate and distinct from Millikin University investigations.

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.

The contact information for Millikin's Public Safety Department is below:

Millikin Public Safety  
Walker Hall, 1<sup>st</sup> Floor, North End  
217-464-8888

The contact information for local law enforcement is below:

Decatur Police Department  
707 West South Side Drive  
217-424-2711

### **3.3 Reporting to Outside Agencies:** Students and employees may report to external agencies:

#### **Students:**

**Denver Office**  
**Office for Civil Rights**  
**U.S. Department of Education**  
Cesar E. Chavez Memorial Building  
1244 Speer Boulevard, Suite 310  
Denver, CO 80204-3582

**Phone: 303-844-5695**

**Fax: 303-844-4303; TDD: 800-877-8339**

**Email: [OCR.Denver@ed.gov](mailto:OCR.Denver@ed.gov)**

**Employees:**

**U.S. Equal Employment Opportunity Commission**

JCK Federal Building  
230 S Dearborn Street (Suite 1866)  
Chicago, IL 60604

**Phone: [312-872-9777](tel:312-872-9777)**

**Fax [312-588-1260](tel:312-588-1260)**

**TTY [1-800-669-6820](tel:1-800-669-6820)**

**Outside Agency Confidential Support and Resources:** Any individual may also access resources located in the local community. These organizations can provide crisis intervention services, counseling, medical attention and assistance in dealing with the criminal justice system. If accessing these resources, individuals are encouraged to clarify whether the resources are confidential. Other off-campus counselors, advocates, and health care providers will also generally maintain confidentiality and not share information with Millikin University unless the victim requests the disclosure and signs a consent or waiver form. Other resources and referrals can be found on the Student Health and Wellness webpage.

**National Hotlines:**

**Center for Prevention of Abuse**

Provides a full range of victim assistance and resources

Crisis Hotline 1-800-559-SAFE (7233)

**National Sexual Assault Hotline**

Call: (800) 656-4673

Live Chat: [www.rainn.org](http://www.rainn.org)

**Decatur Memorial Hospital:**

(Individuals can receive sexual assault forensic exams at this location)

2300 N Edward Street, Decatur, IL 62526

217.876.8121

<https://memorial.health/decatur-memorial-hospital/overview/>

**Counseling Services:**

Millikin Student Mental and Behavioral Health Services (SMBH)

SMBH provides students with free counseling services and referral to community services, if needed.

217-424-6360



**LifeWorks Employee Assistance Program (EAP)**

The EAP is available to all employees and their dependents and offers support with mental, physical and emotional well-being.  
877-234-5151

**Growing Strong**

Growing Strong is a rape crisis center in Decatur that provides healing services to victims of sexual assault and sexual abuse, and their significant others and also serves as Millikin's confidential reporting resource.  
270 West Prairie Ave, 217-428-0770, <http://www.growingstrongcenter.org>

**Dove, Inc.**

Dove is a coalition of religious organizations, volunteers, and advocates that seek to coordinate efforts to address unmet human needs and social injustices. Dove works for justice, equality, and understanding among all people.  
302 South Union Street, 217-428-6616, <http://www.doveinc.org/>

**3.4 Time Limits on Reporting:**

There are no time limits on reporting Sexual Harassment to the Title IX Coordinator or Millikin University. If the Respondent is no longer subject to Millikin University's Education Program or Activity or significant time has passed, Millikin University will have limited ability to investigate, respond and/or provide disciplinary remedies and sanctions.

**3.5 Millikin University's Federal and State Reporting Obligations:**

**3.5.1 Institutional Crime Reporting:** Certain Millikin University employees, called Campus Security Authorities, have a duty to report certain incidents of misconduct to comply with the Clery Act. Campus Security Authorities are not required to report personally identifiable information for Clery Act purposes, but statistical information must be sent regarding the type of incident that occurred and its general location (e.g., on or off-campus) for publication in an annual report of crime statistics, called the Annual Security Report. Statistics published in the Annual Security Report help to provide the campus community with a clearer picture of the extent and nature of campus crime, but the statistics do not personally identify Complainants or Respondents. Reports by Campus Security Authorities are not official police reports and do not initiate criminal investigations.

When Sexual Assault, Domestic Violence, Dating Violence, and/or Stalking are reported under the Clery Act, Millikin University must issue timely warnings for such incidents that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

Millikin University will not disclose a Complainant's name and other identifying information in a timely warning but will provide sufficient information for Millikin



University community members to make informed safety decisions in response to potential danger.

**3.5.2 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.

**3.6 Preservation of Evidence:** Millikin University recognizes that a Complainant may need time to decide whether to report an incident of Sexual Harassment to the police and/or Millikin University. The purpose of this section is to provide Complainants with suggestions on preserving evidence while they decide whether to report an incident.

Millikin University encourages Complainants, as soon as possible after experiencing Sexual Assault to take steps to preserve evidence such as:

- Have a forensic sexual assault nurse examination performed as soon as possible after the incident, but no later than 72-96 hours after the incident
- When possible, prior to having a forensic sexual assault nurse examination performed, avoid: changing clothing, bathing, showering, using a douche, using the bathroom, brushing one's teeth, drinking liquids, washing one's hands or face, or combing one's hair;
- Preserve any clothing, sheets, or other materials (items containing bodily fluids should be stored in cardboard boxes or paper bags);
- Preserve or capture electronic communications such as text messages, e-mails, social media posts or exchanges (e.g., Snapchat, Facebook, Twitter);
- Preserve or capture video, audio (e.g., voice mail messages), or photographs, including those stored on smartphones or other devices; and
- Preserve any other physical, documentary, and/or electronic data that might be helpful to an investigator.

#### **Section 4: Initial Response to Reported Sexual Harassment**

Upon receipt of a report of Sexual Harassment, the Title IX Coordinator will promptly contact the Complainant, regardless of whether the Complainant was the individual who initiated the report. During the initial contact with the Complainant, the Title IX Coordinator will:

- Provide the Complainant with notice of their rights and options;
- Explain the process for filing a Formal Complaint;
- Explain the Grievance Process;
- Discuss the availability of Supportive Measures regardless of whether a Formal Complaint is filed;
- Consider the Complainant's wishes with respect to Supportive Measures.

## **Section 5: Formal Complaint**

Millikin University will investigate all allegations of Sexual Harassment in a Formal Complaint.

### **5.1 Filing a Formal Complaint:** A Formal Complaint must:

- (1) Contain an allegation of Sexual Harassment against a Respondent;
- (2) Request that Millikin University investigate the allegation; and
- (3) Be signed by the Complainant or Title IX Coordinator.

In limited circumstances, if a Complainant does not sign a Formal Complaint, the Title IX Coordinator may sign a Formal Complaint. In determining whether to sign a Formal Complaint, the Title IX Coordinator will consider factors that include but are not limited to:

- Whether there have been other reports of Sexual Harassment or other relevant misconduct concerning the same Respondent whether or not the incidents occurred while the Respondent was an Millikin University student or employee;
- Whether the Respondent threatened further Sexual Harassment or other misconduct against the Complainant or others;
- Whether the alleged Sexual Harassment was committed by multiple perpetrators;
- The nature and scope of the alleged Sexual Harassment including whether the Sexual Harassment was perpetrated with a weapon;
- The ages and roles of the Complainant and the Respondent;
- Whether Millikin University can pursue the investigation without the participation of the Complainant (e.g., whether there are other available means to obtain relevant evidence of the alleged Sexual Harassment such as security cameras or physical evidence);
- Whether the report reveals a pattern of perpetration (e.g., perpetration involving illicit use of drugs or alcohol) at a given location or by a particular group.

### **5.2 Dismissal of a Formal Complaint**

**5.2.1 Required Dismissal:** The Title IX Coordinator will dismiss a Formal Complaint for purposes of Sexual Harassment if:

- (1) The conduct alleged in the Formal Complaint would not constitute Sexual Harassment as defined in this Policy even if proved;
- (2) The conduct alleged did not occur in Millikin University's Education Program or Activity; or
- (3) The Conduct alleged in the Formal Complaint did not occur against a person in the United States.

Dismissal of a Formal Complaint does not preclude action under other provisions of Millikin University's policies and procedures. If a Formal Complaint is

dismissed under the matter will be reviewed to determine whether the matter will be pursued under the Non-Title IX Sexual Harassment Policy, Code of Conduct (for students), Standards of Conduct Policy (for employees), or any other applicable Millikin University policy.

**5.2.2 Permissive Dismissal:** The Title IX Coordinator may dismiss a Formal Complaint or any allegations within the Formal Complaint, if at any time during the investigation or hearing:

- (1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations within the Formal Complaint;
- (2) The Respondent is no longer enrolled or employed by Millikin University; or
- (3) Specific circumstances prevent Millikin University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations within the Formal Complaint.

**5.2.3 Appeal of Dismissal:** Either party may appeal the dismissal of a Formal Complaint or any allegations therein. See Section 7 for bases and process for appeals.

**5.3 Consolidation of Formal Complaints:** The Title IX Coordinator may consolidate Formal Complaints as to allegations of Sexual Harassment against more than one Respondent or by more than one Complainant against one or more Respondents where the allegations arise out of the same facts or circumstances.

## **Section 6: Grievance Process**

The grievance process within this Policy is designed to treat Complainants and Respondents equitably. Remedies are provided to a Complainant where a determination of responsibility for Sexual Harassment has been made against the Respondent and Disciplinary Sanctions are not imposed against a Respondent prior to the completion of the grievance process.

### **6.1 General Grievance Process Information**

**6.1.1 Burden of Proof and Burden of Gathering Evidence:** All investigations and proceedings, including hearings, relating to Sexual Harassment will be conducted using a preponderance of the evidence standard. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on Millikin University, not the parties.

**6.1.2 Presumption of Not Responsible:** The Respondent is presumed to be not responsible for the alleged conduct until a determination regarding responsibility is made at the end of the grievance process.

**6.1.3 Time Frames for Grievance Process:** Millikin University strives to complete the grievance process within one hundred and twenty (120) Business Days. Temporary delays and/or extensions of the time frames within this Policy may occur for good cause. Written notice will be provided to the parties of the delay and/or extension of the time frames with an explanation of the reasons for such action. Examples of good cause for delay/extensions include but are not limited to considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

**6.1.4 Medical Records:** Millikin University will not access, consider, disclose, or otherwise use party's records that are that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless Millikin University obtains that party's voluntary, written permission to do so for the grievance process within the Policy.

**6.1.5 Privileged Information:** Millikin University will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding the privilege has waived the privilege.

**6.1.6 Range of Disciplinary Sanctions:** Sanctions that may be required if an individual is found responsible for violating this policy include, but are not limited to:

**(1) For Students:**

- 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

**(2) For Employees:**

- 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.

**6.1.7 Notice of Meetings, Interviews, and Hearings:** Parties and witnesses will be provided notice of any meeting, interview, and/or hearing with sufficient time to prepare to participate. This notice will include the date, time, location, participants and purposes of the meeting, interview, and/or hearing.

**6.2 Notice of Allegations:** Upon receipt of a Formal Complaint, the investigator will provide Notice of Allegations to the parties who are known. The Notice of Allegations will include:

- (1) Notice of the party's rights and options
- (2) Notice of Millikin University's grievance process
- (3) Notice of Millikin University's informal resolution process and options
- (4) Notice of the allegations of Sexual Harassment including:
  - The identities of the parties involved in the incident, if known,
  - The conduct allegedly constituting Sexual Harassment, and
  - The date and location of the incident, if known.
- (5) Notice that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- (6) Notice that the parties may have an advisor of their choice, who may be, but is not required to be an attorney, and that the advisor may inspect and review evidence as explained in Section 6 of this Policy.
- (7) Notice of the Millikin University Student and Employee Handbook provision that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

The Notice of Allegations will be updated, and written notice provided to the parties if at any time during the investigation, Millikin University decides to investigate allegations about the Complainant or Respondent that are not included in the initial Notice of Allegations.

### **6.3 Investigation of Formal Complaint**

Millikin University will conduct an investigation following a Formal Complaint and Notice of Allegations. During all meetings and interviews the parties may be accompanied by an advisor of their choice, which can be, but is not required to be an attorney. During the investigation stage of the grievance process, the advisor's role is limited to assisting, advising, and/ or supporting a Complainant or Respondent. An advisor is not permitted to speak for or on behalf of a Complainant or Respondent or appear in lieu of a Complainant or Respondent during the investigation phase of the grievance process.

**6.3.1 Opportunity to Provide Information and Present Witnesses:** Each party will be provided an equal opportunity to provide information to the investigator and present witnesses for the investigator to interview. The information provided by the parties can



include inculpatory and exculpatory evidence. The witnesses can include both fact witnesses and expert witnesses.

**6.3.2 Opportunity to Inspect and Review Evidence:** Each party will be provided an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including evidence upon which Millikin University does not intend to rely upon in reaching a determination regarding responsibility. This review includes inculpatory and exculpatory evidence that is obtained by a party, witness, or other source. Each party and their advisor (if any) will be provided an electronic copy of the evidence for inspection and review. The parties will have ten (10) business days to review and submit a written response to the investigator. The investigator will consider the written responses prior to completing an investigative report. All evidence provided during the inspection and review phase will be available at any hearing for the parties to use during the hearing, including for purposes of cross examination.

**6.3.3 Investigative Report:** Following the opportunity to inspect and review evidence directly related to the allegations raised in the Formal Complaint, the investigator will create an investigative report that fairly summarizes relevant evidence obtained during the investigation.

**6.3.4 Review of the Investigative Report:** At least ten (10) Business Days prior to a hearing, the investigator will provide each party and the party's advisor (if any) an electronic copy of the investigative report for their review and written response.

**6.3.5 Investigation Timeframe:** The investigation of a Formal Complaint will be concluded within ninety (90) Business Days of the filing of a Formal Complaint. The parties will be provided updates on the progress of the investigation, as needed.

**6.4 Live Hearing:** After the investigation, Millikin University will provide for a live hearing for all Formal Complaints of Sexual Harassment that have not been dismissed per Section 5.2 or resolved by informal resolution under Section 8. At the request of either party, or at the discretion of the Title IX Coordinator, Millikin University will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker and parties to simultaneously see and hear the other party or witness answering questions<sup>10</sup>.

**6.4.1 Information at the Hearing:** The following information/evidence will be available in electronic form at the hearing:

- (1) Evidence from the investigation, including the evidence directly related to the allegations that was reviewed by the parties, regardless of whether it was incorporated into the report.
- (2) The investigation report and any attachments/appendices.

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<sup>10</sup> Millikin University can also conduct the hearing in full virtual format (via Zoom or comparable platform) when requested by either party or otherwise at the discretion of the University.

**6.4.2 Decision-makers:** The decision-maker(s) will be appointed by Millikin University and will not be the Title IX Coordinator or investigator. The decision-maker(s) will be trained, impartial, and without a conflict of interest. The decision-makers in any Title IX matter can be a three-person panel of Millikin University employees or an external individual designated by Millikin University. In the three-person panel model, Millikin University will designate one of the panelists as the chairperson who will be responsible for communicating at the hearing on behalf of the hearing panel.

**6.4.3 Challenge to a decision maker:** Either party may challenge the appointment of a decision-maker, based on conflict of interest or bias, in writing to the Title IX Coordinator, no less than five (5) Business Days prior to the scheduled hearing.

**6.4.4 Advisor's Role at the Hearing:** Each party must have an advisor present at the hearing. The advisor's role is limited to supporting, advising, and assisting the party during the hearing and conducting questioning (cross-examination) of participants. Advisors are required to follow rules of decorum enforced by the decision-maker. Failure to follow the rules of decorum by an advisor may result in removal of an advisor from the hearing. If a party does not have an advisor present at the live hearing, Millikin University will appoint the party with an advisor without fee or charge.

**6.4.5 Recording of the Hearing:** Millikin University will create an audio or audiovisual recording of all live hearings and make the recording available to the parties for inspection or review.

**6.4.6 Hearing Process Facilitator:** Millikin University may designate a hearing process facilitator to coordinate the hearing, including, but not limited to, coordination and scheduling of the hearing; the logistics of physical or virtual rooms for parties and/or witnesses, including separation of the parties; ensuring all technology is working appropriately; ensuring the parties have access to electronic documents during the hearing; distributing materials; etc. The facilitator may also be the Title IX Coordinator. The facilitator may invite the parties and their advisors, separately, to a meeting prior to the hearing to review the hearing process for the purpose of ensuring a smooth hearing. This meeting is separate from the pre-hearing conference discussed below.

**6.4.7 Pre-Hearing Matters:** To streamline the hearing process, the decision-maker may request the submission of questions prior to the hearing through electronic submission and/or a pre-hearing conference.

**(1) Pre-Hearing Submission of Questions:** The decision-maker may request the parties to submit questions, in writing prior to the hearing. This submission does not preclude the Advisor from asking additional questions live during the hearing. The decision-maker may allow for the pre-hearing submission of questions regardless of whether a pre-hearing conference occurs.

**(2) Pre-Hearing Conference:** The decision-maker may hold a pre-hearing conference. During the pre-hearing conference, parties and their Advisors will be asked to submit, in writing, any questions they wish to ask during the live hearing

so that the decision-maker can be prepared to respond to relevancy at the hearing. This conference does not preclude the Advisor from asking additional questions live during the hearing.

At the pre-hearing conference, the decision-maker may also hear arguments regarding the relevance of the evidence identified in the investigation report as relevant or not relevant, and/or directly related to the allegations.

**6.4.8 Participants in the Hearing.** Participants at the hearing include the decision-makers, the investigator(s) who conducted the investigations, the parties, advisors to the parties, witnesses and anyone providing authorized accommodations. In addition, Millikin University may have a hearing facilitator present. Any witnesses scheduled to participate in the hearing must have been interviewed first by the investigator(s) or have provided a written statement or answered questions from the investigator in writing.

**6.4.9 Hearing Process and Phases:** The live hearing will include the following phases:

**(1) Notice of Hearing:** the investigative report has been completed and at least ten (10) business days prior to the date set for the hearing, the parties and their Advisors (if any) will be provided with a Notice of the Hearing. The Notice will include the date, time, location, name of the decision-maker, names of all participants in the hearing, and the location (virtual or in person) of the hearing.

**(2) Opening Statements:** Each party will have the opportunity to present an opening statement to the decision-maker.

**(3) Questioning of Hearing Participants (Parties and Witnesses):**

- i. **By the Decision-Maker:** The decision-maker(s) will ask initial questions of the participants at the hearing.
- ii. **By the Advisors:** After the decision-maker(s) asks questions of a participant, each party's advisor will be permitted to ask relevant questions and follow up questions orally, directly, and in real time of the participant. The parties are never permitted to ask questions of participants directly. The questioning of participants by advisors will be conducted in the following manner:
  - A question is asked by an advisor
  - Before participant answers the questions, the decision-maker(s) determines whether the question is relevant
  - If the question is determined relevant by the decision-maker(s), the participant answers the question
  - If the question is determined not to be relevant by the decision-maker(s), the decision-maker(s) must explain the decision to exclude a question as not relevant.
- iii. **Evidence and Questions Excluded:**
  - **Sexual Predisposition or Prior Sexual Behavior of the Complainant:** Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that

someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove Consent.

- **Privileged Information:** No person will be required to disclose information protected under a legally recognized privilege. The decision-maker must not allow into evidence or rely upon any questions or evidence that may require or seek disclosure of such information, unless the person holding the privilege has waived the privilege. This includes information protected by the attorney-client privilege.
  - **Medical Records:** Evidence or records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, are not permitted to be used during a hearing unless the party provides voluntary, written permission to do so for the grievance process within this Policy.
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**(4) Closing Statements:** Each party will have the opportunity to present a closing statement to the decision-maker.

**6.4.10 Determination Regarding Responsibility:** After the live hearing, the decision-maker(s) will deliberate in private. The decision-maker will issue a written determination based on a majority vote of the decision-makers regarding responsibility using the preponderance of the evidence standard. The chairperson will provide the Complainant and the Respondent with the written determination simultaneously. The determination regarding responsibility becomes final either on the date that Millikin University provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. The written notice will include:

- Identification of the allegations potentially constituting Sexual Harassment;
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of this Policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions that Millikin University imposes on the Respondent, and whether remedies designed to

- restore or preserve equal access to Millikin University's education program or activity will be provided by Millikin University to the Complainant<sup>11</sup>; and
- The procedures and permissible bases for the Complainant and Respondent to appeal.

## **Section 7: Appeals**

Either party may appeal the determination regarding responsibility, or the dismissal of a Formal Complaint or any allegations therein within three (3) Business Days of the receipt of the determination regarding responsibility or dismissal. The appeals must be made in writing and delivered to the Title IX Coordinator.

**7.1 Bases for Appeal:** Appeals of the determination of responsibility or the dismissal of a Formal Complaint may be made on the following bases:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or
- The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.
- The sanction(s) was/were clearly disproportionate with the violation.

**7.2 Appeal Procedures:** If an appeal is submitted, Millikin University will:

(1) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties.

(2) Ensure that the decision-maker for the appeal is not the same person as the decision-maker that reached the determination regarding responsibility or dismissal, the investigator or the Title IX Coordinator.

(3) Provide the non-appealing party with five (5) Business Days from receipt of the notification of appeal to submit a written statement in support of the outcome of the determination or dismissal.

(4) Issue a written decision describing the result of the appeal and the rationale for the result which can be one of the following:

- Affirm the decision-maker(s) determination regarding the Respondent's responsibility and affirm the disciplinary sanctions and remedies, if applicable;
- Affirm the decision-maker(s) determination regarding the Respondent's responsibility and amend the disciplinary sanctions and remedies, if applicable;
- Remand the process back to the hearing stage for the decision-maker(s) to remedy any procedural irregularity or consider any new evidence;

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<sup>11</sup> The Title IX Coordinator is responsible for the implementation of any remedies.



- Reverse the decision-maker(s) determination of the Respondent's responsibility and amend the disciplinary sanctions and remedies, if applicable; or
- Affirm or amend the sanctions and/or remedies outlined in the determination issued under this Policy.

(5) Provide the written decision simultaneously to both parties.

**7.3 Appeal Timeframe:** The appellate decision-maker will release the written decision within twenty (20) Business Days of receiving the appeal.

## **Section 8: Informal Resolution Process**

At any time after a Formal Complaint has been signed and before a determination regarding responsibility has been reached, the parties may voluntarily agree to participate in an informal resolution facilitated by Millikin University, that does not involve a full investigation and adjudication. Types of informal resolution include, but are not limited to, mediation, facilitated dialogue, conflict coaching, and restorative justice and resolution by agreement of the parties.

**8.1 Informal Resolution Notice:** Prior to entering the informal resolution process, Millikin University will provide the parties with a written notice disclosing:

- (1) The allegations;
- (2) The requirements of the informal resolution process, including the right of any party to withdraw from the informal resolution process and resume the grievance process and the circumstances which preclude parties from resuming a Formal Complaint arising from the same allegations;
- (3) Consequences resulting from the informal resolution process, including that the records will be maintained for a period of seven (7) years but will not be used by investigators or decision-makers if the formal grievance process resumes.

**8.2 Informal Resolution Agreement:** Prior to entering the informal resolution process, the parties must voluntarily agree, in writing to the use of the informal resolution process.

**8.3 Informal Resolution Availability:** The informal resolution process is not permitted to resolve allegations that an employee committed Sexual Harassment against a student.

**8.4 Informal Resolution Timeframe:** Informal resolutions of a Formal Complaint will be concluded within 45 days of notice to Millikin University that both parties wish to proceed with the informal resolution process. Such notice that the parties wish to proceed with an informal resolution process will "pause" the counting of the timeframe to conclude the Grievance Process of this Policy, should the informal resolution process fail, and the parties continue with the Grievance Process.

**8.5 Informal Resolution Documentation.** Any final resolution pursuant to the Informal Resolution process will be documented and kept for seven (7) years. However, no recording of the informal resolution process will be made and all statements made during the informal

resolution process will not be used for or against either party (and the decision-maker and/or appellate decision-maker may not consider any such statement made during informal resolution) should the parties resume the grievance process. Failure to comply with an informal resolution agreement may result in disciplinary action.

## **Section 9: Emergency Removal and Administrative Leave**

**9.1 Emergency Removal:** At any time after the Title IX Coordinator is on notice of Sexual Harassment, Millikin University may remove a Respondent on an emergency basis. Millikin University will only conduct an emergency removal after:

- (1) Undertaking and individualized safety and risk analysis,
- (2) Determining that an immediate threat the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal, and
- (3) Providing the Respondent with notice and an opportunity to challenge the decision to the Title IX Coordinator, within two (2) Business Days following the removal.

**9.2 Administrative Leave:** Millikin University may place a non-student employee Respondent on administrative leave during the pendency of the grievance process in this Policy.

## **Section 10: Recordkeeping**

Millikin University will maintain all of the documentation related to reports of Sexual Harassment, Formal Complaints, the grievance process, and information resolution process for seven years in accordance with state and federal records laws and requirements. The documentation of all records is private and confidential to the extent possible under law. Student records of the grievance process are disciplinary records under the Family Education Rights and Privacy Act (FERPA). Employee records of the grievance process are subject to the Freedom of Information Act (FOIA) and applicable state laws and included in the employee's official employment record.

## **Section 11: Additional Conduct Violations Related to This Policy**

Alleged violations of the terms in this section will be sent to the Student Conduct Office for student Respondents and Human Resources for employee Respondents. Retaliation, providing false information in the grievance process, interfering with the grievance process, and/or violating a directive from a Millikin University official (including violating a No Contact Directive) are prohibited under the Millikin University Student and Employee Handbooks.

The Student Handbook can be found here: <https://millikin.edu/about/administration/student-affairs/student-handbook>

The Employee Handbook can be found here:

<https://millikinedu.sharepoint.com/sites/MillikinUniversityIntranet/SitePages/Policies-and-Procedures.aspx>

## **Section 12: Applicable Illinois State Laws**

### **12.1 Definitions Related to Consent**

Pursuant to 720 ILCS 5/11-0.1, “consent” means a freely given agreement to the act of sexual penetration or sexual conduct in question. Lack of verbal or physical resistance or submission by the victim resulting from the use of force or threat of force by the accused shall not constitute consent. The manner of dress of the victim at the time of the offense shall not constitute consent. “Unable to give knowing consent” includes when the accused administers any intoxicating or anesthetic substance, or any controlled substance causing the victim to become unconscious of the nature of the act and this condition was known, or reasonably should have been known by the accused. As used in this paragraph, “unconscious of the nature of the act” means incapable of resisting because the victim meets any one of the following conditions:

- (1) Was unconscious or asleep;
- (2) Was not aware, knowing, perceiving, or cognizant that the act occurred;
- (3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator’s fraud in fact; or
- (4) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator’s fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.

Additionally, pursuant to 720 ILCS 5/11-1.70,

- a) It shall be a defense to any offense under Section 11-1.20, 11-1.30, 11-1.40, 11-1.50, or 11-1.60 of this Code where force or threat of force is an element of the offense that the victim consented.
- b) It shall be a defense under subsection (b) and subsection (c) of Section 11.150 and subsection (d) 20of Section 11-1.60 of this Code that the accused reasonably believe the person to be 17 years of age or over.
- c) A person who initially consents to sexual penetration or sexual conduct is not deemed to have consented to any sexual penetration or sexual conduct that occurs after he or she withdraws consent during the course of that sexual penetration or sexual conduct.

**12.2 Criminal Sexual Assault:** (720 ILCS 5/11-1.20): A person commits criminal sexual assault if that person commits an act of sexual penetration and: (1) uses force or threat of force; (2) knows that the victim is unable to understand the nature of the act or is unable to give knowing consent; (3) is a family member of the victim, and the victim is under 18 years of age; or (4) is 17 years of age or over and holds a position of trust, authority, or supervision in relation to the victim, and the victim is at least 13 years of age but under 18 years of age.

**12.3 Aggravated Criminal Sexual Assault:** (720 ILCS 5/11-1.30) (a) A person commits aggravated criminal sexual assault if that person commits criminal sexual assault and any of the following aggravating circumstances exist during the commission of the offense or, for purposes of paragraph (7), occur as part of the same course of conduct as the commission of the offense:

- (1) the person displays, threatens to use, or uses a dangerous weapon, other than a firearm, or any other object fashioned or used in a manner that leads the victim, under the circumstances, reasonably to believe that the object is a dangerous weapon;

(2) the person causes bodily harm to the victim, except as provided in paragraph (10); (3) the person acts in a manner that threatens or endangers the life of the victim or any other person;

(4) the person commits the criminal sexual assault during the course of committing or attempting to commit any other felony;

(5) the victim is 60 years of age or older;

(6) the victim is a person with a physical disability;

(7) the person delivers (by injection, inhalation, ingestion, transfer of possession, or any other means) any controlled substance to the victim without the victim's consent or by threat or deception for other than medical purposes;

(8) the person is armed with a firearm;

(9) the person personally discharges a firearm during the commission of the offense; or

(10) the person personally discharges a firearm during the commission of the offense, and that discharge proximately causes great bodily harm, permanent disability, permanent disfigurement, or death to another person.

(b) A person commits aggravated criminal sexual assault if that person is under 17 years of age and: (i) commits an act of sexual penetration with a victim who is under 9 years of age; or (ii) commits an act of sexual penetration with a victim who is at least 9 years of age but under 13 years of age and the person uses force or threat of force to commit the act.

(c) A person commits aggravated criminal sexual assault if that person commits an act of sexual penetration with a victim who is a person with a severe or profound intellectual disability.

**12.4 Predatory Criminal Sexual Assault of a Child:** (720 ILCS 5/11-1.40) A person commits predatory criminal sexual assault of a child if that person is 17 years of age or older, and commits an act of contact, however slight, between the sex organ or anus of one person and the part of the body of another for the purpose of sexual gratification or arousal of the victim or the accused, or an act of sexual penetration, and: (1) the victim is under 13 years of age; or (2) the victim is under 13 years of age and that person: (A) is armed with a firearm; (B) personally discharges a firearm during the commission of the offense; (C) causes great bodily harm to the victim that: (i) results in permanent disability; or (ii) is life threatening; or (D) delivers (by injection, inhalation, ingestion, transfer of possession, or any other means) any controlled substance to the victim without the victim's consent or by threat or deception, for other than medical purposes.

**12.5 Criminal Sexual Abuse:** (720 ILCS 5/11-1.50) (a) A person commits criminal sexual abuse if that person: (1) commits an act of sexual conduct by the use of force or threat of force; or (2) commits an act of sexual conduct and knows that the victim is unable to understand the nature of the act or is unable to give knowing consent. (b) A person commits criminal sexual abuse if that person is under 17 years of age and commits an act of sexual penetration or sexual conduct with a victim who is at least 9 years of age but under 17 years of age. (c) A person commits criminal sexual abuse if that person commits an act of sexual penetration or sexual conduct with a victim who is at least 13 years of age but under 17 years of age and the person is less than 5 years older than the victim.

**12.6 Aggravated Criminal Sexual Abuse:** (720 ILCS 5/11-1.60) (a) A person commits aggravated criminal sexual abuse if that person commits criminal sexual abuse and any of the following aggravating circumstances exist (i) during the commission of the offense or (ii) for purposes of paragraph (7), as part of the same course of conduct as the commission of the offense:

- (1) the person displays, threatens to use, or uses a dangerous weapon or any other object fashioned or used in a manner that leads the victim, under the circumstances, reasonably to believe that the object is a dangerous weapon;
- (2) the person causes bodily harm to the victim;
- (3) the victim is 60 years of age or older;
- (4) the victim is a person with a physical disability;
- (5) the person acts in a manner that threatens or endangers the life of the victim or any other person;
- (6) the person commits the criminal sexual abuse during the course of committing or attempting to commit any other felony; or
- (7) the person delivers (by injection, inhalation, ingestion, transfer of possession, or any other means) any controlled substance to the victim for other than medical purposes without the victim's consent or by threat or deception.

(b) A person commits aggravated criminal sexual abuse if that person commits an act of sexual conduct with a victim who is under 18 years of age and the person is a family member.

(c) A person commits aggravated criminal sexual abuse if:

- (1) that person is 17 years of age or over and: (i) commits an act of sexual conduct with a victim who is under 13 years of age; or (ii) commits an act of sexual conduct with a victim who is at least 13 years of age but under 17 years of age and the person uses force or threat of force to commit the act; or
- (2) that person is under 17 years of age and: (i) commits an act of sexual conduct with a victim who is under 9 years of age; or (ii) commits an act of sexual conduct with a victim who is at least 9 years of age but under 17 years of age and the person uses force or threat of force to commit the act.

(d) A person commits aggravated criminal sexual abuse if that person commits an act of sexual penetration or sexual conduct with a victim who is at least 13 years of age but under 17 years of age and the person is at least 5 years older than the victim.

(e) A person commits aggravated criminal sexual abuse if that person commits an act of sexual conduct with a victim who is a person with a severe or profound intellectual disability.

(f) A person commits aggravated criminal sexual abuse if that person commits an act of sexual conduct with a victim who is under 18 years of age and the person is 17 years of age or over and holds a position of trust, authority, or supervision in relation to the victim.

**12.7 Dating Violence:** The Illinois Criminal Code does not define this term.

**12.8 Domestic Violence:** (750 ILCS 60/103)



(1) “Abuse” means physical abuse, harassment, intimidation of a dependent, interference with personal liberty or willful deprivation but does not include reasonable direction of a minor child by a parent or person in loco parentis.

...

(3) “Domestic violence” means abuse as defined in paragraph (1).

...

(6) “Family or household members” includes spouses, former spouses, parents, children, stepchildren and other persons related by blood or by present or prior marriage, persons who share or formerly shared a common dwelling, persons who have or allegedly have a child in common, persons who share or allegedly share a blood relationship through a child, persons who have or have had a dating or engagement relationship, persons with disabilities and their personal assistants, and caregivers as defined in Section 12-4.4a of the Criminal Code of 2012. For purposes of this paragraph, neither a casual acquaintanceship nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute a dating relationship. In the case of a high risk adult with disabilities, “family or household members” includes any person who has the responsibility for a high-risk adult as a result of a family relationship or who has assumed responsibility for all or a portion of the care of a high-risk adult with disabilities voluntarily, or by express or implied contract, or by court order.

(7) “Harassment” means knowing conduct which is not necessary to accomplish a purpose that is reasonable under the circumstances; would cause a reasonable person emotional distress; and does cause emotional distress to the petitioner. Unless the presumption is rebutted by a preponderance of the evidence, the following types of conduct shall be presumed to cause emotional distress:

- (i) creating a disturbance at petitioner’s place of employment or school;
- (ii) repeatedly telephoning petitioner’s place of employment, home or residence;
- (iii) repeatedly following petitioner about in a public place or places;
- (iv) repeatedly keeping petitioner under surveillance by remaining present outside his or her home, school, place of employment, vehicle or other place occupied by petitioner or by peering in petitioner’s windows;
- (v) improperly concealing a minor child from petitioner, repeatedly threatening to improperly remove a minor child of petitioner’s from the jurisdiction or from the physical care of petitioner, repeatedly threatening to conceal a minor child from petitioner, or making a single such threat following an actual or attempted improper removal or concealment, unless respondent was fleeing an incident or pattern of domestic violence;
- or
- (vi) threatening physical force, confinement or restraint on one or more occasions.

...

(9) “Interference with personal liberty” means committing or threatening physical abuse, harassment, intimidation or willful deprivation so as to compel another to engage in conduct

from which she or he has a right to abstain or to refrain from conduct in which she or he has a right to engage. 22

(10) “Intimidation of a dependent” means subjecting a person who is dependent because of age, health or disability to participation in or the witnessing of: physical force against another or physical confinement or restraint of another which constitutes physical abuse as defined in this Act, regardless of whether the abused person is a family or household member.

...

(14) “Physical abuse” includes sexual abuse and means any of the following: (i) knowing or reckless use of physical force, confinement or restraint; (ii) knowing, repeated and unnecessary sleep deprivation; or (iii) knowing or reckless conduct which creates an immediate risk of physical harm.

(15) “Willful deprivation” means willfully denying a person who because of age, health or disability requires medication, medical care, shelter, accessible shelter or services, food, therapeutic device, or other physical assistance, and thereby exposing that person to the risk of physical, mental or emotional harm, except with regard to medical care or treatment when the dependent person has expressed an intent to forgo such medical care or treatment. This paragraph does not create any new affirmative duty to provide support to dependent persons.

**12.9 Domestic Battery:** (720 ILCS 5/12-3.2) (a) A person commits domestic battery if he or she knowingly without legal justification by any means: (1) causes bodily harm to any family or household member; (2) makes physical contact of an insulting or provoking nature with any family or household member.

**12.10 Aggravated Domestic Battery:** (720 ILCS 5/12-3.3) (a) A person who, in committing a domestic battery, knowingly causes great bodily harm, or permanent disability or disfigurement commits aggravated domestic battery. (a-5) A person who, in committing a domestic battery, strangles another individual who commits aggravated domestic battery. For the purposes of this subsection (a-5), “strangle” means intentionally impeding the normal breathing or circulation of the blood of an individual by applying pressure on the throat or neck of that individual or by blocking the nose or mouth of that individual.

**12.11 Stalking:** (720 ILCS 5/12-7.3) (a) A person commits stalking when he or she knowingly engages in a course of conduct directed at a specific person, and he or she knows or should know that this course of conduct would cause a reasonable person to: (1) fear for his or her safety or the safety of a third person; or (2) suffer other emotional distress. (a-3) A person commits stalking when he or she, knowingly and without lawful justification, on at least 2 separate occasions follows another person or places the person under surveillance or any combination thereof and: (1) at any time transmits a threat of immediate or future bodily harm, sexual assault, confinement or restraint and the threat is directed towards that person or a family member of that person; or (2) places that person in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement or restraint to or of that person or a family member of that person. (a-5) A person commits stalking when he or she has previously been convicted of stalking

another person and knowingly and without lawful justification on one occasion: (1) follows that same person or places that same person under surveillance; and (2) transmits a threat of immediate or future bodily harm, sexual assault, confinement or restraint to that person or a family member of that person. (a-7) A person commits stalking when he or she knowingly makes threats that are a part of a course of conduct and is aware of the threatening nature of his or her speech.

#### **12.12 Definitions — For purposes of Stalking:**

(1) “Course of conduct” means two or more acts, including but not limited to acts in which a defendant directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, engages in other non-consensual contact, or interferes with or damages a person’s property or pet. A course of conduct may include contact via electronic communications.

(2) “Electronic communication” means any transfer of signs, signals, writings, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectric, or photo-optical system. “Electronic communication” includes transmissions by a computer through the Internet to another computer.

(3) “Emotional distress” means significant mental suffering, anxiety or alarm.

(4) “Family member” means a parent, grandparent, brother, sister, or child, whether by whole blood, half-blood, or adoption and includes a step-grandparent, stepparent, stepbrother, stepsister or stepchild. “Family member” also means any other person who regularly resides in the household, or who, within the prior 6 months, regularly resided in the household.

(5) “Follows another person” means (i) to move in relative proximity to a person as that person moves from place to place or (ii) to remain in relative proximity to a person who is stationary or whose movements are confined to a small area. “Follows another person” does not include a following within the residence of the defendant.

(6) “Non-consensual contact” means any contact with the victim that is initiated or continued without the victim’s consent, including but not limited to being in the physical presence of the victim; appearing within the sight of the victim; approaching or confronting the victim in a public place or on private property; appearing at the workplace or residence of the victim; entering onto or remaining on property owned, leased, or occupied by the victim; or placing an object on, or delivering an object to, property owned, leased, or occupied by the victim.

(7) “Places a person under surveillance” means: (1) remaining present outside the person’s school, place of employment, vehicle, other place occupied by the person, or residence other than the residence of the defendant; or (2) placing an electronic tracking device on the person or the person’s property.

(8) “Reasonable person” means a person in the victim’s situation.

(9) “Transmits a threat” means a verbal or written threat or a threat implied by a pattern of conduct or a combination of verbal or written statements or conduct

....

(d-10) A defendant who directed the actions of a third party to violate this Section, under the principles of accountability set forth in Article 5 of this Code, is guilty of violating this Section as if the same had been personally done by the defendant, without regard to the mental state of the third party acting at the direction of the defendant.

**12.13 Aggravated Stalking:** (720 ILCS 5/12-7.4) (a) A person commits aggravated stalking when he or she commits stalking and: (1) causes bodily harm to the victim; (2) confines or restrains the victim; or (3) violates a temporary restraining order, an order of protection, a stalking no contact order, a civil no contact order, or an injunction prohibiting the behavior described in subsection (b)(1) of Section 214 of the Illinois Domestic Violence Act of 1986. (a-1) A person commits aggravated stalking when he or she is required to register under the Sex Offender Registration Act or has been previously required to register under that Act and commits the offense of stalking when the victim of the stalking is also the victim of the offense for which the sex offender is required to register under the Sex Offender Registration Act or a family member of the victim.

...

(d) A defendant who directed the actions of a third party to violate this Section, under the principles of accountability set forth in Article 5 of this Code, is guilty of violating this Section as if the same had been personally done by the defendant, without regard to the mental state of the third party acting at the direction of the defendant.

**12.14 Cyberstalking:** (720 ILCS 5/12-7.5) (a) A person commits cyberstalking when he or she engages in a course of conduct using electronic communication directed at a specific person, and he or she knows or should know that would cause a reasonable person to: (1) fear for his or her safety or the safety of a third person; or (2) suffer other emotional distress.

(a-3) A person commits cyberstalking when he or she, knowingly and without lawful justification, on at least 2 separate occasions, harasses another person through the use of electronic communication and: (1) at any time transmits a threat of immediate or future bodily harm, sexual assault, confinement, or restraint and the threat is directed towards that person or a family member of that person; or (2) places that person or a family member of that person in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement, or restraint; or (3) at any time knowingly solicits the commission of an act by any person which would be a violation of this Code directed towards that person or a family member of that person.

(a-4) A person commits cyberstalking when he or she knowingly, surreptitiously, and without lawful justification, installs or otherwise places electronic monitoring software or spyware on an electronic communication device as a means to harass another person and: (1) at any time

transmits a threat of immediate or future bodily harm, sexual assault, confinement, or restraint and the threat is directed towards that person or a family member of that person; (2) places that person or a family member of that person in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement, or restraint; or (3) at any time knowingly solicits the commission of an act by any person which would be a violation of this Code directed towards that person or a family member of that person.

(a-5) A person commits cyberstalking when he or she, knowingly and without lawful justification, creates and maintains an Internet website or webpage which is accessible to one or more third parties for a period of at least 24 hours, and which contains statements harassing another person and: (1) which communicates a threat of immediate or future bodily harm, sexual assault, confinement, or restraint, where the threat is directed towards that person or a family member of that person, or (2) which places that person or a family member of that person in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement, or restraint, or (3) which knowingly solicits the commission of an act by any person which would be a violation of this Code directed towards that person or a family member of that person.

#### **12.14 Definitions – For purposes of Cyberstalking:**

(1) “Course of conduct” means two or more acts, including but not limited to acts in which a defendant directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, engages in other non-consensual contact, or 2425 interferes with or damages a person’s property or pet. The incarceration in a penal institution of a person who commits the course of conduct is not a bar to prosecution under this Section.

(2) “Electronic communication” means any transfer of signs, signals, writings, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectric, or photo-optical system. “Electronic communication” includes transmissions through an electronic device including, but not limited to, a telephone, cellular phone, computer, or pager, which communication includes, but is not limited to, e-mail, instant message, text message, or voice mail. (2.1) “Electronic communication device” means an electronic device, including, but not limited to, a wireless telephone, personal digital assistant, or a portable or mobile computer.

(2.1) “Electronic communication device” means an electronic device, including, but not limited to, a wireless telephone, personal digital assistant, or a portable or mobile computer.

(2.2) “Electronic monitoring software or spyware” means software or an application that surreptitiously tracks computer activity on a device and records and transmits the information to third parties with the intent to cause injury or harm. For the purposes of this paragraph (2.2), “intent to cause injury or harm” does not include activities carried out in furtherance of the prevention of fraud or crime or of protecting the security of networks, online services, applications, software, other computer programs, users, or electronic communication devices or similar devices.

(3) “Emotional distress” means significant mental suffering, anxiety or alarm.

(4) “Harass” means to engage in a knowing and willful course of conduct directed at a specific person that alarms, torments, or terrorizes that person.

(5) “Non-consensual contact” means any contact with the victim that is initiated or continued without the victim’s consent, including but not limited to being in the physical presence of the victim; appearing within the sight of the victim; approaching or confronting the victim in a public place or on private property; appearing at the workplace or residence of the victim; entering onto or remaining on property owned, leased, or occupied by the victim; or placing an object on, or delivering an object to, property owned, leased, or occupied by the victim.

(6) “Reasonable person” means a person in the victim’s circumstances, with the victim’s knowledge of the defendant and the defendant’s prior acts.

(7) “Third party” means any person other than the person violating these provisions and the person or persons towards whom the violator’s actions are directed.

...

(e) A defendant who directed the actions of a third party to violate this Section, under the principles of accountability set forth in Article 5 of this Code, is guilty of violating this Section as if the same had been personally done by the defendant, without regard to the mental state of the third party acting at the direction of the defendant.