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## SECTION MENU

# PG-6 SEXUAL MISCONDUCT

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**Policy:** PG- 6

**Subject:** Title IX Sexual Misconduct; see also [University Administrative Regulation 337](#).

**Approval Date:** 07/01/85

**Revision Date:** 04/30/93; 09/15/05; 09/24/15;  
02/27/20; 8/06/20; 12/03/20

## PURPOSE:

Morehead State University is committed to complying with Title IX and related laws. This policy is adopted to prevent, investigate and respond to incidents of sexual

misconduct, including sexual harassment, sexual assault, domestic violence, dating violence, and stalking in violation of Title IX. These guidelines apply to all members of the University community. The University will respond promptly to reports of sexual misconduct in a manner that is not deliberately indifferent.

## **APPLICATION:**

This policy applies to all faculty, staff, students, affiliates, volunteers, guests and subcontractors of the University.

Morehead State University is committed to creating and maintaining a community where all individuals who participate in University education programs and activities can work and learn together in an atmosphere free of harassment, exploitation, or intimidation. Morehead State University will not tolerate sexual misconduct as defined in this Policy, in any form. Such acts are prohibited by University policy, as well as state and federal laws. Individuals who the University determines more likely than not engaged in these types of behaviors are subject to penalties up to and including dismissal or separation from Morehead State University, regardless of

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whether they are also facing criminal or civil charges in a court of law.

Nothing contained in this policy shall be construed to supplant or modify existing laws of the Commonwealth of Kentucky and the United States. This policy shall not be used to remedy acts which are crimes under the laws of the Commonwealth of Kentucky or the United States.

## **DEFINITIONS:**

### **A. MSU POLICY DEFINITIONS**

MSU policy prohibits gender discrimination. Sexual misconduct is a form of gender discrimination which violates state and federal law and University policy. Different forms of sexual misconduct are explained in this policy. The determination of what constitutes sexual misconduct will vary with the facts and circumstances of each case. For acts of gender discrimination that is not covered by one of the forms of sexual misconduct addressed in this policy, please see MSU's other policies on discrimination.

**Actual Knowledge:** Actual knowledge means notice of sexual harassment or allegations of sexual harassment to the University's Title IX Coordinator or any official of the University

who has the authority to institute corrective measures on the University's behalf.

**Complainant** means an individual who has reported being or is alleged to be the victim of conduct that could constitute sexual harassment,

**Consent** as used in this policy is defined as follows:

- Consent is **informed**. Consent is an affirmative, knowing, unambiguous, and conscious decision by each participant to engage in mutually agreed-upon sexual activity.
- Consent is **voluntary**. It must be given without coercion, force, threats, or intimidation. Consent means positive cooperation in the act or expression of intent to engage in the act pursuant to an exercise of free will. Even though consent does not necessarily need to be verbal, relying purely on non-verbal communication can lead to misunderstandings. A spoken agreement is the most clearly indicated form of consent. It may not, in any way, be inferred from silence, passivity, lack of resistance or lack of an active response alone. Consent cannot be assumed to be given by the absence of a "no."
- Consent is **revocable**. Consent to some form of sexual activity does not imply consent to other forms of sexual

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activity. Consent to sexual activity on one occasion is not consent to engage in sexual activity on another occasion. A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Even in the context of a relationship, there must be mutual consent to engage in sexual activity. Consent must be ongoing throughout a sexual encounter and can be revoked at any time. Once consent is withdrawn, the sexual activity must stop immediately.

- Consent cannot be given when a person is **incapacitated**. A person cannot consent if s/he is unconscious or coming in and out of consciousness. A person cannot consent if s/he is under the threat of violence, bodily injury or other forms of coercion. A person cannot consent if his/her understanding of the act is affected by a physical or mental impairment. Consent must be given with rational and reasonable judgment, so if the alleged victim was physically incapacitated from the consumption of alcohol or drugs, unconsciousness, or any other kind of inability, consent cannot be obtained.
- Consent **cannot be given** when a person is:
  - Less than sixteen (16) years of age;

- Sixteen (16) or seventeen (17) years of age and the actor is at least ten (10) years older than the victim at the time of the sexual act;
- Unable to communicate consent or lack of consent, or unable to understand the nature of the act or its consequences, due to an intellectual disability or mental illness;
- Mentally incapacitated;
- Physically helpless; or
- Under the care or custody of a state or local agency pursuant to court order and the actor is employed by or working on behalf of the state or local agency unless the persons are lawfully married and no court order prohibits the contact.

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**Dating Violence** means violence committed by a person:

- Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- 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.

**Deliberate Indifference** is unreasonableness in light of the known circumstances.

**Domestic Violence** includes felony or misdemeanor crimes of violence committed by:

- A current or former spouse or intimate partner of the victim;
- A person with whom the victim shares a child in common;
- A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
- A person similarly situated to a spouse of the victim under the domestic or family violence laws of Kentucky; or
- Any person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Kentucky.

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**Education Program or Activity** includes locations, events, or circumstances within the United States over which the University exercises substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that the institution officially recognizes.

**Formal Complaint** is a document signed and filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent about conduct within the University's education program or activity and requesting initiation of the University's grievance procedures consistent with this policy that the University investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the University. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed by the University for the Title IX Coordinator, and by any additional method designated by the University. As used in this policy, the phrase "document filed by a complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the recipient) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal Complaint. Where the Title IX Coordinator signs a formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party.

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

**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.

**Sexual Harassment:** Sexual harassment is conduct based on sex that satisfies one or more of the following:

- An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
- Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution's education program or activity; or
- Sexual assault (as defined in the Clery Act), or dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).

**Stalking** occurs when someone engages 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.

**Supportive Measures** means nondisciplinary, 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 access to the University's education program or activity, without unreasonably burdening the other party; protect the safety of all parties or the recipient's educational environment, or deter sexual harassment. The University must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

**Unwelcome Conduct** on the basis of sex is 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.

**Title IX Coordinator:** The Title IX coordinator has a responsibility to coordinate the University's efforts to comply with its obligations under Title IX, the Title IX regulations, this Policy and University Administrative Regulations. These responsibilities include coordinating any investigations of complaints received pursuant to Title IX and the implementing regulations and Policy.

The Title IX Coordinator, Deputy Title IX Coordinator and Title IX Investigators shall be appointed by the President and identified in the Appendix to this Policy.

## **REPORTING:**

\*Special reporting requirements for minors (individuals under 18 years old). MSU requires reporting to the educational institution's Title IX Coordinator(s) and to either law enforcement or child protective services any sexual abuse of a minor by faculty, staff, volunteers and contractors affiliated with the institution.

MSU strongly encourages persons who have experienced sexual misconduct, or knows of someone 18 years or older who has experienced sexual misconduct, to report the incident to MSU per this policy. Any person may report sex discrimination

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including sexual harassment whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment. The report may be made in person, by mail, by telephone or electronic mail using the contact information listed for the Title IX Coordinator, official of the University who has the authority to institute corrective measures on the University's behalf or may be reported by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time including during nonbusiness hours by using the telephone number or electronic mail address or by mail to the office address listed for the Title IX Coordinator.

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In case of an emergency or ongoing threat, a victim should get to a safe location and call [911](#) or [606-783-2035](#). Calling 911 will put the caller in touch with local police. Calling [606-783-2035](#) will put the caller in touch with university police.

Any official of the University who has the authority to institute corrective measures on the University's behalf and who has received information of alleged misconduct under this Policy shall notify and provide such to the Title IX Coordinator.

University officials deemed to have such authority shall be designated pursuant to University Administrative Regulation.

## **A. Reporting Timeframe**

Any person may file a report of sexual misconduct at any time. Timely reporting is encouraged to preserve evidence and provide the alleged victim and the respondent with information regarding rights, options and resources available under this policy and federal/state laws.

The Title IX Coordinator or Deputy Coordinator will provide alleged victims of sexual misconduct and respondents with information about available support services and resources, and also assist alleged victims in notifying law enforcement, including the local police, if the person elects to do so. Alleged victims are not required to report to area law enforcement in order to receive assistance from or pursue options within MSU. Reporting sexual misconduct to the police does not commit the alleged victim to further legal action. However, the earlier an incident is reported, the easier it will be for the police to investigate if the alleged victim decides to proceed with criminal charges.

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## **B. Reporting Options**

This section addresses options for reporting sexual misconduct. MSU may investigate sexual misconduct even without a formal complaint whenever it knows or there is reasonable cause to believe that sexual misconduct in violation of this policy has occurred.

1. **Confidential Disclosure:** Despite MSU's strong interest in having persons report complaints of sexual misconduct, it is understood that not everyone is prepared to make an official report to MSU. Help may be sought from certain resources that are not required to reveal private, personally identifiable information unless there is cause for fear for the survivor's safety or the safety of others. If a person desires that details of the incident be kept confidential, contact should be made with counselors or other providers who can maintain confidentiality, such as the Caudill Health Clinic. Such professionals generally are not legally required to report personally identifiable information given in confidence unless given permission or unless the allegations involve a minor. If the survivor chooses not to pursue a judicial process option (e.g., criminal charges), generally no further action will be taken unless the professional who receives the concern believes there is an imminent threat to the survivor or others. Persons who disclose incidents of sexual

misconduct to counselors, clergy or other providers who can legally maintain confidentiality should discuss whether to have that counselor, advocate or provider report the misconduct to MSU and request interim measures required by Title IX, or request discretionary support measures from MSU without reporting the nature of the conduct.

2. **Requests via a Counselor, Clergy or other Provider:** A victim may have his/her counselor, clergy or other provider who can legally maintain confidentiality request interim measures from MSU on the victim's behalf. The request may trigger MSU's obligation to investigate. To the extent a counselor, clergy or other provider makes a disclosure but, consistent with the victim's wishes, asks MSU not to investigate or otherwise notify the accused of the report, the Title IX Coordinator or Deputy Coordinators will consider whether he/she can honor the request while still providing a safe and nondiscriminatory environment for all students, faculty and staff, and to take interim measures to protect the victim as needed.

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## **C. Required Confidentiality**

The University shall keep confidential the identity of any individual who has made a report or complaint of sex

discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the Family Education Rights & Privacy Act and regulations, or as required by law or to carry out Title IX including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

## **D. Drug, Alcohol and other Code of Conduct Amnesty**

MSU offers amnesty (immunity) to students who may have violated MSU's policies concerning the use of drugs and/or alcohol and other student code of conduct violations at the time of the incident when he or she became a victim of, a respondent or witnessed, sexual misconduct. Therefore, no MSU alcohol or drug charges or other code of conduct violation for involvement in or reporting shall be made if the violation does not involve sex discrimination or sexual harassment but arises out of the same facts or circumstances as a report, complaint or formal complaint of sexual harassment.

The purpose of this section is to encourage reporting. Alleged victims or witnesses should not let their use of alcohol or drugs

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or other code of conduct violations deter them from reporting an incident. When conducting the investigation, MSU's primary focus will be addressing the sexual misconduct violation and not other violations that may be discovered or disclosed. However, MSU may provide referrals to counseling and may require educational programming on drugs and alcohol, rather than disciplinary sanctions, in such cases.

## **INTERIM AND SUPPORTIVE MEASURES**

The Title IX Coordinator or Deputy Coordinator has the right to determine which, if any, supportive measures should be issued in an individual case. Such measures are designed to restore or preserve access to the University's education program or activity, without unreasonably burdening the other party. Supportive measures shall be available to complainants and respondents equitably. The measures shall protect the safety of all parties and the University's educational environment including deterring sexual harassment. Supportive measures shall be kept confidential except as necessary to facilitate enforcement.

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The Title IX Coordinator or Deputy must promptly contact the complainant to discuss the availability of supportive measures and consider the complainant's wishes as to the measures. The complainant shall be advised that supportive measures are available whether or not a formal complaint is filed.

Additionally, the Title IX Coordinator/Deputy shall explain to the Complainant the process for filing a formal complaint.

The Title IX Coordinator/Deputy shall similarly advise the respondent as to the availability of supportive measures and consider the respondent's wishes as to same.

Supportive measures may include but are not limited to changes in class schedules; living or working arrangements; safety escorts; parking arrangements; dining arrangements; no contact orders and resources for professional counseling.

The University may remove a respondent from any of its education programs and/or activities on an emergency basis.

The University must undertake an individualized safety and risk analysis and determine that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal.

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For a respondent who is a student, the Title IX Coordinator/Deputy may recommend to the Dean of Students that the student respondent be removed from an education program and/or activity. The Dean may issue the removal notice based upon the above criteria. The notice may initially be issued verbally, by email or other electronic means or in writing by in person or mail delivery. If the initial notice is not in writing, a written notice shall be issued as soon as possible. The notice shall state the removal parameters and the specific reason for the decision. The notice shall also provide the respondent the right to challenge the removal immediately by requesting an in person hearing with the Dean. The respondent may present his/her position orally and/or in writing and may be represented at the hearing.

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For an employee, the Title IX Coordinator/Deputy may recommend to the employee's Vice President that the employee be placed on administrative leave during the pendency of the investigation. The Vice President may issue the leave order and provide written notice, or verbal notice followed by written notice, to the employee.

MSU shall enforce any orders of protection issued by a court. If any member of the MSU community obtains an order of

protection or restraining order, he/she should promptly inform the Title IX Coordinator or Deputy Coordinator and provide a copy of that order. A copy of the order shall also be provided to MSU Police.

## **ADVISORS**

A party may be accompanied by an advisor of the party's choice at any related meeting or proceeding. The advisor may or may not be an attorney except as provided by law. The advisor may consult with the party but may not speak for the party.

Notwithstanding the above, the advisor shall be allowed to be at the hearing to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.

If a party does not otherwise have an advisor, at the time of the hearing the University must provide without fee or charge to the party, an advisor of the University's choice to conduct cross examination on behalf of that party.

## **CONFLICT OF INTEREST**

The University requires that no Title IX Coordinator/Deputy, investigator, decision maker, or any person designated to

facilitate an informal process may have a conflict of interest or bias for or against complainants or respondents generally or for or against an individual complainant or respondent.

## **INFORMAL RESOLUTION**

At any time after a formal complaint has been filed, but prior to a determination regarding responsibility, an informal resolution process may be utilized to resolve a complaint. The University may facilitate the informal resolution process, such as mediation, that does not involve a full investigation and adjudication. Either party may request informal resolution, or the Title IX Coordinator/Deputy or the Investigator may suggest the informal process to the parties. The University will use its best efforts to conduct the informal resolution within ten (10) days of agreement to enter into the process.

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Both parties shall sign a voluntary written consent to participate in the informal resolution process. The parties shall be provided a written notice setting forth the allegations and the requirements of the informal resolution process and notice of finality of the resolution. At any time prior to a signed written resolution agreement, a party has the right to withdraw from the informal resolution process and resume the formal complaint process. Once the written resolution agreement is signed by

both parties, they are both precluded from resuming the processing of the formal complaint arising from the same allegations. The parties shall further be given written notice of any resolution records that will be maintained or could be shared.

The informal resolution process may not be offered or facilitated to resolve allegations that an employee sexually harassed a student.

## **INVESTIGATION PROCESS**

MSU's Title IX Coordinator/Deputy and/or investigators shall investigate alleged violations of this policy. Each report must be evaluated on a case-by-case basis, taking into account the relevant circumstances of each case. The investigation process shall include interviews, reviewing student and/or employee files, and gathering and examining other relevant evidence, as appropriate. The investigation process will be balanced and fair and give both the accused and the complainant the chance to discuss his/her involvement in the reported incident. It is presumed the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the policy's process.

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# Notice of Allegations

Upon receipt of a formal complaint, the University must provide the following written notice to the parties who are known:

- Notice of the University's Title IX process including notice of the informal resolution process;
- Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in this policy including sufficient details known at the time and with sufficient time to prepare a response before any initial interview;
- Sufficient details include the identities of the parties involved in the incident, if known, conduct allegedly constituting sexual harassment under this policy, and the date and location of the alleged incident, if known;
- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Title IX process;
- Notice that the parties may have an advisor of the party's choice, who may be but is not required to be, an attorney; except as provided by law;
- Notice of rights of inspection and review of evidence;

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- Notice of any student conduct code provision prohibiting knowingly making false statements or knowingly submitting false information during the grievance process.

If in the course of an investigation the Title IX Coordinator/Deputy and or investigators decide to investigate allegations about the complainant or respondent that are not included in the Notice of Allegations previously provided, the University must provide notice of the additional allegations to the parties whose identities are known.

## **Dismissal of a Formal Complaint**

The University must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in this policy, even if proved, did not occur in the University's education program or activity, or did not occur against a person in the United States, then the University must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX. Such a dismissal does not preclude action under another provision of the University's code of conduct.

The University may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: a complainant notifies the Title IX Coordinator in

writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the University; or specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon a required or permitted dismissal, the University must promptly send written notice of the dismissal and reason(s) therefore simultaneously to the parties including rights of appeal.

## **Consolidation of Formal Complaints**

The University may consolidate formal complaints as to the allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

## **Investigation of a Formal Complaint**

When investigating a formal complaint and throughout the investigative process the University must:

- Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the University and not on the parties provided that the University cannot access, consider, disclose, or otherwise use a party's 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, unless the University obtains the party's voluntary, written consent to do so for the investigative and hearing process.
- Provide an equal opportunity for the parties' witnesses, including fact and expert, and other inculpatory and exculpatory evidence.
- Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- Provide the parties with the opportunity to have an advisor throughout the investigative process as provided in this policy.
- Provide to a party whose participation is invited or expected, written notice of the date, time, location, participants, and

purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate.

- Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the University must send to each party and the party's advisor, if any, the evidence subject to inspection and review in electronic format or a hard copy, and the parties must have at least ten (10) days to submit a written response, which the investigator will consider prior to completion of the investigative report. The University must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity

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MSU will use best efforts to complete the investigation within ninety (90) calendar days from receipt of a report. Limited

extensions of all timeframes may be granted for good cause with written notice to the complainant and the respondent for the reason of the delay or extension and the reasons for the action. Good cause may include 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.

## **Investigative Report**

The University shall create an investigative report that fairly summarizes relevant evidence. At least ten (10) days prior to a hearing, the report shall be sent to each party and the party's advisor, if any. The report shall be in an electronic format or hard copy for the parties' review and written responses.

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## **Hearing and Appeal Officers**

Post investigative hearings and appeals conducted pursuant to this policy shall be conducted by a hearing or appeals officer as provided through University Administrative Regulation. The officers shall be trained pursuant to this policy and may be university employees or hired through contract.

The Title IX Coordinator/Deputy shall assign officers to hearings and appeals.

# Hearing Process

If a case has not been dismissed or resolved in the informal process, the Title IX Coordinator/ Deputy, upon completion of or receipt from an investigator of an investigative report, will refer the case for a live hearing.

The Title IX Coordinator/Deputy shall provide the parties the name of the hearing officer. The parties shall have seven days to provide in writing to the Title IX Coordinator any objection to the officer due to bias which shall be specifically set forth.

Each party will have the following hearing rights:

- The right to notice of the specific allegations at issue, including notice of anticipated witnesses and evidence to be addressed at the hearing. Each party shall submit to the Title IX Coordinator and to all other parties a list of all witnesses the party may call at the hearing and a copy of all exhibits to be introduced.
- The right to access information and evidence directly related to him/her within a reasonable time before the hearing.
- The right to attend the hearing and speak on his/her own behalf. Invoking the right not to speak will not be considered an admission of responsibility.
- The right to have an advisor as set forth in this policy.

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- The right to introduce evidence and question witnesses at the hearing, provided, however, that the complainant and the accused will not be allowed to directly question each other. Cross examination shall only be conducted by a party's advisor.
- The hearing officer may ask questions of the witnesses at the hearing.

Hearings will be closed to the public. Hearings shall be recorded, by video, audio, or transcript with a copy of same made available to both parties for inspection and review. Testimony shall be sworn.

Live hearings may be conducted with all parties physically present in the same geographic location. At the University's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. At the request of either party, the University must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the hearing officer and parties to simultaneously see and hear the party or the witness answering questions.

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The hearing officer shall permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.

Only relevant direct questions and cross examination may be asked of a party or witness. Prior to a party or witness answering a question, the hearing officer shall determine whether the question is relevant and explain any decision to exclude a question as not relevant.

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.

Evidence that does not rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, shall not be

admitted at the hearing unless the person holding such privilege has waived the privilege.

If a party or witness does not submit to cross-examination at the live hearing, the hearing officer must not rely on any statements of that party or witness in reaching a determination regarding responsibility.

The hearing officer shall not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

Following a hearing, the hearing officer must issue a written determination regarding responsibility. The hearing officer shall determine whether, given the evidence and testimony presented, it is more likely than not that a violation of this policy occurred (preponderance of evidence). If it is found a violation occurred, remedies must be designed to restore or preserve equal access to the University's education program and/or activities. Possible hearing outcomes for students include, but are not limited to, changes to class schedules; changes to living arrangements; limitations on participation in activities, community service, suspension, separation or expulsion from MSU. Faculty and staff, among other possible remedies, may be formally

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reprimanded, be limited in participation in academic and campus activities, suspended without pay, or removed from employment. The measure taken will depend upon the individual circumstances.

The hearing officer's written determination must include:

- Identification of the allegations potentially constituting sexual harassment under this policy;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the party, 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 the University's policies and regulations to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
- A description of the disciplinary sanctions, if any;
- A statement of any remedies to restore or preserve equal access to the University's education program and/or activities; and

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- The University's procedures and permissible basis for the parties to appeal.

The Title IX Coordinator will inform both parties simultaneously in writing of the outcome the investigation and/or hearing within seven (7) business days of the investigation and/or hearing's conclusion. If the measure taken by the hearing officer includes suspension or removal of a faculty or staff member, the Title IX Coordinator will also forward the decision to the President. If the measures involve a student, the outcome will be reported to the Vice President for Student Affairs

The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the result of an 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.

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The Title IX Coordinator is responsible for effective implementation of any remedies.

## **Appeal Process**

An appeal may be filed from either dismissal of a formal complaint or any individual allegations of the complaint or from a decision of the hearing officer.

Once a decision has been made and both parties have been notified of the outcome, either party may appeal that outcome (including punishment). Appeals must be received by the Title IX Coordinator no later than ten (10) calendar days after the date the underlying decision is issued to both parties. Appeals received after the deadline will not be processed. Appeals should be marked “confidential” and submitted by hand delivery or by email or mail to the Title IX Coordinator. The appeal shall state with particularity the basis therefore.

Both parties will be notified in writing by the Title IX Coordinator that an appeal was received. The notice shall include the basis for the appeal. Both parties shall have ten (10) days from the date of the notice to submit a written statement to the Title IX Coordinator in support of, or challenging, the outcome. A copy of the statement shall be provided by the Title IX Coordinator to the other party.

The Title IX Coordinator/Deputy shall provide the parties the name of the Appeals Officer. The parties shall have seven (7) days to provide in writing to the Title IX Coordinator/Deputy any objection to the appeals officer appointed due to bias on behalf of the officer which shall be specifically stated.

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After the statements have been received, or the time to file the statements has run, the time for objection to the appeals officer has expired, and the record for appeal is assembled, the Title IX Coordinator shall submit the appeal to the Appeals Officer.

MSU Appeals Officer will assess and decide the appeal based on the record within twenty-one (21) calendar days of receiving the appeal, unless circumstances require more time, in which case the Title IX Coordinator will advise the parties of the need for more time. For appeals of dismissal or partial dismissal of a formal complaint, the record shall consist of the full case record of the complaint. Appeals following a hearing, shall consist of the hearing record and exhibits considered by the hearing officer. Grounds for appeal are limited to the following:

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- MSU made a procedural error, which affected the outcome.
- New evidence has been discovered that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter.
- The determination of whether a violation occurred was arbitrary and unjustified by the evidence presented at hearing.

- The Title IX Coordinator/Deputy, investigator(s), or hearing officer 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. Such objection must have been previously raised in a timely manner by the party.
- The penalties imposed or other protective measures taken are too severe based on the evidence of record.

The Appeals Officer shall issue a written decision describing the result of the appeal and the rationale for the result.

The Title IX Coordinator will notify the parties simultaneously of the outcome of the appeal. All decisions by MSU Appeals Officer are final with the exception of the following:

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- Sanctions which include student suspension or expulsion, which may be further appealed to the President and Board of Regents in the same manner as provided by the MSU Eagle Student Handbook for Student Disciplinary Committee decisions.
- Sanctions which include suspension or dismissal of a staff member which may be appealed to the President who will review the record and determine if dismissal or another

penalty is appropriate. The President's decision shall be final.

- Sanctions which include faculty termination/removal, which may be further appealed to the President and Board of Regents. Sanction involving suspension without pay, may be appealed to the President. The President shall review the record and determine whether suspension or dismissal is appropriate. The decision of the President shall be final if he/she determines suspension or another penalty is appropriate. If the President determines removal is appropriate, he/she shall refer the case to the Board of Regents who shall review the case on the record de novo. The Board may either remove the faculty member or may determine if a lesser penalty is appropriate. The decision of the Board shall be final.

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## **NO RETALIATION OR DETERRENCE FOR PARTICIPATION IN THE TITLE IX PROCESS**

Neither the University nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the

purpose of interfering with any right or privileges secured by Title IX or its regulations. This protection shall include reporting, filing a complaint, testifying, assisting, participating or refusing to participate in any manner in an investigation, proceeding or hearing under this policy. Retaliation includes 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 its regulations.

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Retaliation does not include the exercise of rights protected by the First Amendment to the U.S. Constitution. Likewise, 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 prohibited retaliation. However, the fact of a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination.

# DISSEMINATION OF POLICY AND INFORMATION

The University shall notify applicants for admission and employment as well as current students of the title, office address, electronic mail address, and telephone number of the Title IX Coordinator and Deputy Coordinator.

Notification that the University does not discriminate on the basis of sex in education programs and activities shall be made to applicants for admission and employment as well as students. The notice shall advise that the University is required by Title IX and regulations thereunder not to discriminate and that these requirements extend to admission and employment.

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The notification shall further provide that inquiries as to the application of Title IX and regulations thereunder may be referred to the University's Title IX Coordinator, the Assistant United States Secretary of Education or both.

The University shall prominently display contact information for the Title IX Coordinator and this policy on the University's website and in all handbooks and catalogs made available to current students and applicants for admission and employment.

# RECORDKEEPING

The University must maintain the following records for a period of no less than seven years:

1. Each sexual harassment investigation, including any determination regarding responsibility, and any audio or audiovisual recording or transcript of a hearing, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the University's education program or activity;
2. Any appeal and decision;
3. Any informal resolution and result therefrom;
4. All materials used to train Title IX Coordinators, investigators, decision makers, and any person who facilitates an informal resolution process. The University shall make these training materials publicly available on its website.

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For each response to a formal complaint, the University shall create and maintain for a period of no less than seven years, records of any actions including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the University must document

the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the University's educational program and/or activity. If no supportive measures are provided the complainant, then the University shall document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The University may continue to update additional explanations and/or detail additional measures taken.

## **TRAINING AND EDUCATION**

All students, faculty, staff and others as designated by the Title IX Coordinator must complete MSU-sponsored training on sexual misconduct issues within the dates and times arranged by the Title IX Coordinator as frequently as designated by the President. This shall include training as relates to minors on campus and reporting of abuse. Failure to do so may result in corrective action.

The University must ensure that the Title IX Coordinator/Deputy, investigators, decision makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment, the scope of the University's education

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program and activities, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. The University must ensure that decision makers receive training on any technology to be used at a live hearing, on issues of relevance, of questions of evidence, including when questions and evidence about the complainants sexual predisposition or prior sexual behavior are not relevant. The University also must ensure that investigators receive training on issues of relevance to create an investigativ report that fairly summarizes relevant evidence.

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Materials used to train Title IX Coordinator/Deputy, investigators, decision makers, and any person who facilitates an informal process must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

## **RESOURCES**

Numerous resources both on and off campus are available and shall be set forth in the Appendix to this policy. The resources shall be updated as appropriate without necessity to amend this policy.

# APPENDIX

## Title IX Coordinator

Andrea Stone, Coordinator

W.H. Rice Service Bldg.

[606-783-5272](tel:606-783-5272)

[titleix@moreheadstate.edu](mailto:titleix@moreheadstate.edu)

[a.stone@moreheadstate.edu](mailto:a.stone@moreheadstate.edu)

## Deputy Title IX Coordinator

C.J. Nunley

310 Rader Hall Morehead, KY 40351

[cjnunley@moreheadstate.edu](mailto:cjnunley@moreheadstate.edu)

## Investigators

Richard Fletcher

Shelby Marcum

## Hearing Officers/Appeals Officers

Meredith Reeves

Dustin Nelson

# RESOURCES

## Health

EMAIL US!

MSU Health Clinic, [606-783-2055](tel:606-783-2055)

112 Allie Young Hall

Morehead, KY 40351

UK-St. Claire

222 Circle Drive, [606-783-6500](tel:606-783-6500) (Emergency Department)

Morehead, KY 40351

## **Mental Health/Counseling/Advocacy**

MSU Counseling Center, [606-783-2055](tel:606-783-2055)

112 Allie Young Hall

Morehead, KY 40351

After hours, evenings and weekends, contact [606-783-2035](tel:606-783-2035) (MSU Police)

UK-St. Claire, [606-783-6661](tel:606-783-6661)

Behavioral Health Unit

475 Clinic Drive

Morehead, KY 40351

Pathways, [606-784-4161](tel:606-784-4161)

321 East Main Street

Morehead, KY 40351

Pathways Community Crisis Hotline, [606-784-1141](tel:606-784-1141) ext. 4401 or [800-562-8909](tel:800-562-8909)

EMAIL US!

325 East Main Street

Morehead, KY 40351

Pathways Victim Advocate/Services

Megan Rookard, [606-326-2875](tel:606-326-2875) Ext. 4643

[mrookard@pathways-ky.org](mailto:mrookard@pathways-ky.org)

Pathways Outpatient Trauma Therapist

Taunya Carpenter, [606-784-4164](tel:606-784-4164) Ext. 4451

[tcarpenter@pathways-ky.org](mailto:tcarpenter@pathways-ky.org)

DOVES of Gateway, Inc., [606-784-6880](tel:606-784-6880) or [800-221-4361](tel:800-221-4361) (Crisis #)

P.O. Box 1012

Morehead, KY 40351

Kentucky Coalition Against Domestic Violence (KCADV), [502-209-5382](tel:502-209-5382)

111 Darby Shire Circle

Frankfort, KY 40601

24-hour Crisis Line - [988](tel:988)

National Domestic Violence Hotline - [800-799-SAFE](tel:800-799-SAFE) (7233).

National Sexual Assault Hotline - [800-656-HOPE](tel:800-656-HOPE) (4673).

## **Police Department Contacts**

EMAIL US!

[MSU Police Department, 606-783-2035](tel:606-783-2035) or [911](tel:911) from campus phones

Education Services Building

627 E. Main Street

Morehead, KY 40351

Morehead Police Department, [606-784-7511](tel:606-784-7511) or [911](tel:911)

105 East Main Street

Morehead, KY 40351

Kentucky State Police (Post 8), [606-784-4127](tel:606-784-4127)

1595 Flemingsburg Road

Morehead, KY 40351

## Online Resources

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If a person feels the need to pursue further help and counseling, there are institutions and charity groups that are specialized and specifically trained to aid survivors of different violent crimes. A formal report is not required to access these resources. These are some nationwide websites that provide help:

- [National Domestic Violence Hotline](#)
- [National Center for Victims of Crime](#)
- [National Sexual Assault Hotline](#)

- [Girls Health Website](#)
- [Clery Center for Security on Campus](#)

# CONTACT HUMAN RESOURCES

## Human Resources

301 Howell-McDowell  
Morehead, KY 40351

EMAIL: [humanresources@moreheadstate.edu](mailto:humanresources@moreheadstate.edu)

PHONE: 606-783-2097



[VIEW HUMAN RESOURCES STAFF](#)

EMAIL US!



150 University Blvd.  
Morehead, Kentucky 40351

1-800-585-6781  
606-783-2000

[Academic Catalogs](#)

[Academic Calendars](#)

[Accreditation](#)

[Transcripts](#)

[Privacy Policy](#)

[Nondiscrimination & Title IX](#)

[Web Accessibility](#)

[MAKE A GIFT](#)

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