

MISSOURI WESTERN STATE UNIVERSITY

Governance Advisory Council Report  
2015-2016

June 3, 2016

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**GOVERNANCE ADVISORY COUNCIL**

April 26, 2016

Attendees: Jackie Burns, Dr. Jeanne Daffron, Dr. Britt Johnson, Dr. Gordon Mapley, Shana Meyer, Natasha Oakes, Dr. Kathleen O'Connor, Sally Sanders, Dr. Bob Willenbrink

Others: Marilyn Baker, Susan Bracciano, Dr. Judy Grimes, Paul Orscheln, Jamie Sweiger

**GAC #15-13 – 2015 Changes to General Studies Policies and Procedures**

**Source of Proposal:** General Studies Committee

**Purpose of Proposal:** Policy Revision / For Information

**Current Policy or Procedure:** MWSU Policy Guide, Appendices, Faculty Senate Bylaws

**Proposed Policy or Procedure:**

The General Studies committee was given the following special charge:

- Make a recommendation to Faculty Senate about wording of ambiguous language in Faculty Senate Bylaws III.F.4. Duties.b.2. (ex. "In general, General Studies courses should not have pre-requisites")

In response we held several meetings, had lively discussion, and came up with the following recommendations, each of which was unanimously approved:

Recommendation #1

- Make changes to the Faculty Senate Bylaws III.F.4. Duties.b.2 in accordance with the following documents

*Justification*

- This new language should provide better guidance to future decisions about placing pre-requisites and co-requisites on general studies courses while still maintaining ample room for the judgment of the committee to make informed decisions

Recommendation #2

- Make changes to the Faculty Senate Bylaws III.F.4.Membership. c in accordance with the following documents.

- Change the General Studies cycle from a three year cycle in which the entire committee is appointed at once to a two year cycle in which one-half of the committee is to be appointed each year.
- To begin this new two year cycle with the termination of the current three year cycle in the Spring of 2016 which will begin work in the Fall of 2016
- To appoint one-half of the new committee to a two year term and one-half of the committee to a one year term in order to ensure the rotation of half of the committee each year.

*Justification*

- This will make the General Studies committee more flexible in terms of responding to changing demands of third parties including state requirements and accrediting body requirements
- This will help ensure that there is no cycle in which a majority or totality of the committee has no previous General Studies Experience
- This two year cycle, described in terms of even and odd years, will do away with the necessity of updating this section of the bylaws at the end of each cycle

Recommendation #3

- Make Changes to the Academic Policies regarding Undergraduate Curriculum Development Academic Policy section D. General Studies Curriculum Development in accordance with the following documents
  - Eliminate Group I-III proposal into a single form
  - Change procedure so that proposals go to the General Studies committee before going to the Undergraduate Curriculum Committee (UGCC)

*Justification*

- This will eliminate confusion on the part of the as to having to guess what the General Studies Committee thinks about a proposal
- It will simplify the process of General Studies proposals
- It will simplify the Policy Guide procedure section of Undergraduate Curriculum Development Policy

Herein begins the documents showing the changes to the Bylaws and Policy Guide:

**Missouri Western State University  
Appendices - Faculty Senate Bylaws**

III. STANDING COMMITTEES OF THE FACULTY SENATE

4. General Studies Committee

Purpose: This committee shall represent the faculty in making periodic reviews of the General Studies curriculum and the general studies philosophy.

Membership:

- a. This committee is composed of nine faculty members, four from the College of Liberal Arts and Sciences, three from the College of Professional Studies, one from the Craig School of Business, and one from the School of Fine Arts. No more than one representative from any department or school may serve on this committee.

- b. The Vice President for Academic and Student Affairs and the Deans of each College and School shall be ex-officio (nonvoting) members.
- c. Term of Office: Half of the committee members shall be appointed every year with each member serving a two year term. The committee will conduct its business in the following cycle:

Fall, Odd Year –

Changes approved in the last general studies program review takes effect

The General Studies committee will distribute GS proposal forms and work with departments as they prepare their proposals.

Spring, Even Year –

All new proposals for this review cycle must be submitted by the end of first week of class. By the end of the third week of classes during the spring semester, the General Studies Committee will submit to the Faculty Senate a report outlining individual proposals. The committee will review the proposals. The results of the proposal review will be presented as an informational report to the Faculty Senate and GAC.

Summer, Even Year –

Proposals that require curriculum changes are forwarded to the UGCC for review. Originating departments will be responsible for completing the proper UGCC Primary Proposal form and its supporting documents. GS proposals that don't require review by UGCC (existing courses, without modification, being proposed for deletion or inclusion within the General Studies Curriculum) will require that the originating departments will be responsible for completing the proper UGCC Technical-Change Proposal form and its supporting documents

Fall, Even Year –

The General Studies Committee begins its work on Duty "a", review all courses in the Two-Year and Four-Year General Studies curricula, considering course syllabi and other pertinent information. During the semester the committee will work with departments to insure that the General Studies course syllabi contain clear statements on how the course fulfills a portion of the General Studies goals.

The UGCC will review the General Studies related proposals. The Chair of the General Studies Committee or Secretary of the General Studies committee will serve as the liaison to the UGCC

The UGCC and GS committee reports will be given to the Faculty Senate and AC by December 1. All bodies complete appropriate action

Spring, Odd Year –

The committee will continue working on Duty “a” by reviewing General Studies course’s syllabi and verify how the course fulfills a portion of the General Studies Goals

The committee will determine whether the current General Studies philosophy needs to be modified before the next review of the General Studies Program: Duty “c”.

~~e. Term of Office: The committee shall be appointed every three years with each member serving a three year term. The most recent committee was appointed in May 2010. The committee will conduct its business on the following cycle:~~

~~May 2013—The Faculty Senate appoints the committee.~~

~~August 1, 2013—The newly appointed General Studies Committee begins its work.~~

~~January 1, 2014—All new proposals for this review cycle must be submitted. May 1, 2014—The review committee reports to the Faculty Senate. December 1, 2011. All bodies complete appropriate action.~~

~~August 1, 2015—The new general studies program takes effect.~~

~~May 2016—The Faculty Senate appoints a new committee.~~

Duties:

- a. Review all courses in the Two-Year and Four-Year General Studies curricula, considering course syllabi and other pertinent information.
- b. Review recommendations for changes, additions, or deletions to the Two-Year and Four-Year General Studies curricula, basing recommendations on the following criteria:
  - (1) The course must be designed for a general audience, not for students in a major or specialized program.
  - (2) General speaking a course should not have any prerequisites unless
    - i. The prerequisite is clearly demonstrated to a majority of the General Studies Committee to be necessary for a majority of students to successfully complete the course or
    - ii. It fulfills a state, federal or regional accreditation body requirement.
  - ~~(2) Generally speaking, a course should not have any prerequisites.~~
  - (3) The course should support the philosophical objectives of General Studies as strongly as the course(s) which it replaces or for which it provides an alternative. Such support should be evident in two ways: in relationship to the philosophical objective to which the course applies directly and in relationship to other

philosophical objectives which it also promotes.

- c. Recommend to the Faculty Senate whether the current General Studies philosophy needs to be modified before the next review of the General Studies program.
- d. The General Studies Committee shall appoint a current member to serve as a liaison to the Undergraduate Curriculum Committee at the beginning of each academic year.
- e. In the first year of the General Studies Committee three-year cycle, when possible, the liaison to the Undergraduate Curriculum Committee appointed should either be the Chair of the General Studies Committee or the Secretary of the General Studies Committee.

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**Missouri Western State University**  
**Academic Policies - Undergraduate Curriculum**  
**Development**

It is the authority of the faculty to develop undergraduate curricula, approve all curricular offerings of the institution, and establish ways to evaluate the effectiveness and currency of the undergraduate curriculum.

**D. General Studies Curriculum Development**

The Chairpersons of the Undergraduate Curriculum and General Studies Committees will use common forms and will coordinate curriculum proposals that fit Group I, II, III, or IV by following these procedures [please consult the Time Schedule for Undergraduate Curriculum Development Procedure, Section Two (IV)(V)(C)(1), and the schedule for the General Studies Committee included in the Bylaws of the Faculty Senate, Appendix M, to determine the appropriate deadlines for proposals in each of the four groups]. By the end of the third week of classes during the spring semester, the General Studies Committee will submit to the Faculty Senate a report outlining individual proposals:

- Procedure:
- (1) Proposals go to the General Studies Committee for action, then
  - (2) An informational report is given to the Faculty Senate and GAC, then
  - (3) Proposals (major, minor or technical) go to the UGCC for action, then
  - (4) The General Studies Committee & UGCC makes recommendations to the GAC.

~~Group I Proposals: — New courses proposed for inclusion in the General~~

~~Studies curriculum. Procedure: (1) Proposals go to the UGCC for action,~~

~~then~~

~~(2) Proposals go to the General Studies Committee for action, then~~

~~(3) An informational report is given to the Faculty Senate, then~~

~~(4) The General Studies Committee makes recommendations to the~~

~~GAC.~~

~~Group II Proposals: Existing courses within the General Studies to which any modifications are being made that require the approval of the UGCC.~~

~~Procedure: (1) Proposals go to the UGCC for action, then  
(2) Proposals go to the General Studies Committee for action, then  
(3) An informational report is given to the Faculty Senate, then  
(4) The General Studies Committee makes recommendations to the GAC.~~

~~Group III Proposals: Existing courses being proposed for deletion or inclusion within the General Studies Curriculum.~~

~~Procedure: (1) Proposals go the General Studies Committee for action, then  
(2) An informational report is given the Faculty Senate, then  
(3) The General Studies Committee makes recommendations to the GAC.~~

1. The Provost and Vice President for Academic Affairs will:
  - a. Collect curriculum proposals related to General Studies and forward them to the General Studies Committee when it functions every third academic year and/or
  - b. Convene for emergency purposes only the most recently constituted General Studies
2. The Faculty Senate may review for approval or disapproval any and all recommendations submitted in the informal reports presented by the General Studies Committee if a majority of the members of the Faculty Senate determine by formal action that such review is needed. This review must be initiated at the first regularly scheduled Faculty Senate meeting after the General Studies Committee submits its informational report to the Senate.

**GAC Summary:** The committee noted a couple of corrections. Under "Duties," b.(2), the first word should be "Generally." Under section D. General Studies Curriculum Development, 1.a. should read "Collect curriculum proposals related to General Studies and forward them to the General Studies Committee when it functions every second academic year and/or..."

With these corrections this proposal will be forwarded to the President for his approval.

**Presidential Action:** This proposal was signed by the President on June 2, 2016.

## GAC #15-14 – Nondiscrimination/Equal Opportunity Policy Procedures for Reporting and Investigating Complaints

**Source of Proposal:** Academic Affairs

**Purpose of Proposal:** Policy Revision / For Information

**Current Policy or Procedure:** MWSU Policy Guide, University Policies Section, Nondiscrimination/Equal Opportunity Policy Procedures for Reporting and Investigating Complaints

**Proposed Policy or Procedure:** Proposed changes in red and strikethrough

The Missouri Western State University is committed to creating and maintaining a learning community dedicated to the advancement and transmission of knowledge and creative endeavors, where all individuals who participate in University programs and activities can work and learn together in an atmosphere of respect, tolerance, and freedom. The University is further committed to addressing and eliminating all forms of discrimination and harassment. Complete copies of the "Nondiscrimination/ Equal Opportunity Statement" may be found in the University's Policy Guide online, the Student Handbook, and the University Catalog.

The procedures outlined in the following policy pertain to reports of unfair treatment on the basis of age, race, color, ethnicity, religion, national origin, marital status, veteran status, handicap/disability or genetic information related to employment, education or public accommodation. These procedures, which are governed by university policy, apply to all university administrators, faculty, staff and students and are to be used in support of university nondiscrimination policies. Should there be a conflict of interest between an investigator and a respondent the next level of administrative supervision will designate an appropriate investigator.

Reporting and Investigation procedures for Title IX or Sexual Misconduct types of complaints will follow the procedures detailed in the University's *Sexual Misconduct Policy*. Please reference <https://www.missouriwestern.edu/titleix/> for more information.

In effort to provide a better understanding of terminology related to these procedures the following definitions are provided:

### DEFINITIONS

Business Days: Business Days are those days on which university offices are officially open for business.

Complainant: A person who brings a complaint alleging that another person(s) has engaged in discriminatory conduct.

Discrimination: Any unfair treatment based on age, race, color, ethnicity, religion, sex, national origin, sexual orientation, marital status, veteran status, handicap/disability or genetic information as it relates to employment, education or public accommodation.

Aspects of employment or education that may be adversely affected by discrimination, include, but are not limited to:

- hiring and firing
- compensation, assignment, or classification of employees or students
- transfer, promotion, layoff or recall
- recruitment
- testing
- use of university facilities
- training and appointment programs
- fringe benefits
- pay, retirement plans and disability leave
- access to courses, advising, and mentoring
- grades
- scholarship, assistantships and tuition waivers
- participation in intercollegiate and intramural sports
- other terms and conditions of employment
- other terms and conditions of admission to or full enjoyment of university programs

Harassment: Unwelcome verbal, nonverbal or physical conduct based on age, race, color, ethnicity, religion, sex, national origin, sexual orientation, marital status, veteran status, handicap/disability or genetic information that has the purpose or effect of creating a hostile campus environment. Harassment may include, but is not limited to:

- offensive jokes
- slurs
- epithets
- name calling
- physical assaults or threats
- offensive touching
- intimidation
- ridicule
- mockery
- insults or put-downs
- offensive objects or pictures
- graffiti
- subjecting a person or persons of a protected class to repeated criticism or verbal abuse but not doing so to similarly situated non-class members.

Harassment can occur in a variety of circumstances, including, but not limited to:

- the harasser can be the victim's supervisor, a supervisor in another area, an agent of Missouri Western, a co-worker, non-employee, faculty/staff member or student;
- the victim does not have to be the person harassed, but can be anyone affected by the offensive conduct; or



- unlawful harassment may occur without economic injury to, or discharge of, the victim.

Investigator: The person designated by the Equal Opportunity Officer responsible for gathering facts and data related to the case.

Respondent: A person who is alleged to have engaged in discriminatory conduct that is the subject of a discrimination complaint.

Retaliation: Taking adverse action, including but not limited to firing, demoting, harassing, lowering a grade or otherwise “retaliating” against a person because he or she filed a complaint of discrimination, because he or she complained about discrimination or because he or she participated in a discrimination proceeding (such as an investigation or lawsuit).

Sexual Harassment: Sexual advances, requests for sexual favors, and other verbal, physical, or visual conduct of a sexual nature constitute sexual harassment when:

- Submission to such conduct is made or threatened to be made, either explicitly or implicitly, a term or condition of an individual’s employment or education
- Submission to or rejection of such conduct by an individual is used or threatened to be used as the basis for academic or employment decisions affecting that individual, or
- Such conduct has the purpose or effect of substantially interfering with an individual’s academic or professional performance or creating what a reasonable person would perceive as an intimidating, hostile, or offensive employment, education, or living environment.

Examples of Sexual Harassment include

- Pressure for a dating, romantic, or intimate relationship
- Unwelcome touching, kissing, hugging, rubbing, or massaging
- Pressure for sexual activity
- Unnecessary references to parts of the body
- Sexual innuendos, jokes, or humor
- Making sexual gestures
- Displaying sexual graffiti, pictures, videos or posters
- Using sexually explicit profanity
- Asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities
- E-mail and Internet use that violates this policy
- Leering or staring at someone in a sexual way, such as staring at a person’s breasts or groin
- Sending sexually explicit emails or text messages
- Commenting on a person’s dress in a sexual manner
- Giving unwelcome personal gifts such as flowers, chocolates, or lingerie that suggest the desire for a romantic relationship
- Commenting on a person’s body, gender, sexual relationships, or sexual activities
- Sexual violence (as defined in the University’s *Sexual Misconduct Policy*)

Please refer to Missouri Western's *Sexual Misconduct Policy* for more information on sexual harassment, sexual violence, domestic violence, stalking and like issues.

### University Representative

The University Representative is the university employee who is informed by the complainant of an incident that may be a violation of the University Nondiscrimination Policy. The University Representative is typically

- 1) The Complainant's or reporting individual's appropriate supervisor, director, department head, department chair, dean, university director or vice president
- 2) The Vice President for Student Affairs is an additional University Representative available to students.

### **REPORTING AND INVESTIGATION PROCEDURES**

If a student, faculty member, staff member or visitor believes that he or she has been discriminated against based on age, race, color, ethnicity, religion, sex, national origin, sexual orientation, marital status, veteran status, disability/handicap or genetic information or harassed; or if he or she has witnessed such discrimination or harassment, that person should promptly report it using one or both of the following methods. Complainants are encouraged to use the Informal Procedure outlined below prior to initiating the Formal Procedure, but are not required to do so.

#### **Informal Procedure**

A. Any student, faculty member, staff member or visitor is encouraged to discuss the matter with the appropriate University Representative as defined above and/or with the Equal Opportunity Officer **or** Title IX Coordinator.

1. If the appropriate University Representative is the person being complained about or if the Complainant **believes** that the appropriate University Representative has a potential conflict of interest or bias in the matter, he or she should contact the immediate supervisor of the University Representative, the Equal Opportunity Officer **or** Title IX Coordinator.

2. University employees who are not in a supervisory position but become aware of or have discrimination or harassment reported to them must contact the Equal Opportunity Officer/Title IX Coordinator as soon as practicable.

B. The University Representative who receives the report shall forward **the complaint incident** to the Equal Opportunity Officer/Title IX Coordinator no more than three (3) Business Days after receiving the complaint. **The report should include the nature of the conduct reported, the persons involved, the alleged facts reported and a suggested/requested solution, if communicated by the complainant.**

~~C. The University Representative will identify the nature of the conduct reported, the persons involved, the alleged facts reported and a suggested/requested solution **This was added to B above.**~~

C. The Equal Opportunity Officer/Title IX Coordinator shall obtain a written statement from the Complainant and attempt to arrive at an informal resolution through appropriate manners, being guided by the concern for fairness to all parties involved. **The respondent should be notified of the complaint filed against him or her within five (5) business days and should submit in writing his/her statement of the incident.** The Equal Opportunity Officer or Title IX Coordinator will provide a written response to the Complainant **and the Respondent** and will include the proposed resolution and the time frame for implementation of any needed action. The entire process should be completed within ten (10) Business Days of receipt of the complaint. If it is not possible to complete the process within ten (10) Business Days, during that time period, an explanation for the delay will be communicated to **all** appropriate parties.

**D. If a complaint involves alleged conduct on the part of the University's President, the Equal Opportunity Officer or Title IX Coordinator shall obtain a written statement from the Complainant and the Respondent and submit those statements to the Chairperson of the University's Board of Governors. If the Chairperson of the University's Board of Governors finds sufficient evidence that a violation of policy occurred, he/she will work with the Equal Opportunity Officer in an attempt to arrive at an informal resolution through appropriate manners, being guided by the concern for fairness to all parties involved.**

E. To the extent possible and except as otherwise provided by law, complaints, information gathered during the informal process and the Equal Opportunity Officer/Title IX Coordinator's written response shall remain **CONFIDENTIAL**. The informal report should be discussed only among the University Representative receiving the report, the Equal Opportunity Officer **or** Title IX Coordinator and others on a need-to-know basis.

F. ~~If the informal resolution requires communication with the Respondent or if the identity of the Complainant must be revealed to the Respondent,~~ The Equal Opportunity Officer **or** Title IX Coordinator shall provide a warning to the Respondent that federal and state law and Missouri Western policy prohibits Retaliation against persons who have filed complaints or persons who participate in the complaint process.

G. If the Complainant **or the Respondent does not agree to** the proposed resolution, the Complainant **or the Respondent** may initiate the Formal Procedure as indicated below.

### **Formal Procedure**

A. To initiate the formal complaint procedure, the Complainant should submit a complaint in writing, signed and dated, to the Equal Opportunity Officer/Title IX Coordinator as soon as possible after the alleged conduct or after the attempt to use the Informal Procedure proves to be unsatisfactory. The written complaint should contain the date of the event, the general nature of the event, the words or conduct involved, the name(s) of the Respondent(s), the names of any witnesses, and a description of any similar incidents involving the same parties in the past. The Equal Opportunity Officer/Title IX Coordinator shall maintain documents for the purpose of making such complaints, but use of a particular form is not required.

**Likewise, the Respondent may request use of the Formal Procedure by submitting the request in writing to the Equal Opportunity Officer/Title IX Coordinator. This request must be made within 5 Business Days after notification of a complaint where he/she is the Respondent or**

within 15 Business Days after notification of the proposed resolution to a complaint where he/she is the Respondent.

B. The Equal Opportunity Officer/Title IX Coordinator shall notify the Respondent **within five (5) Business Days** that a complaint has been filed and provide a warning to the Respondent that federal and state law and Missouri Western policy prohibits retaliation against persons who have filed complaints or whom he or she believes to have filed complaints, or who have participated in an investigation, even if those complaints are ultimately proven to be false. The Respondent shall acknowledge receipt of this information in writing.

C. The Equal Opportunity Officer/Title IX Coordinator ~~or their designee another individual, as appropriate,~~ will investigate **the incident.** ~~or designate an Investigator from the Nondiscrimination/Equal Opportunity Committee or other their designee, as appropriate.~~

D. The Respondent shall provide the Investigator a written statement responding to the allegations within five (5) Business Days of receiving notification of the specifics of the complaint. The written statement may be supplemented as necessary at any time during the investigation. The Investigator may interview the Complainant, the Respondent and any other persons believed to have relevant information about the alleged conduct or similar conduct by the Respondent. Both the Complainant and the Respondent are encouraged to bring all relevant evidence and potential witnesses to the attention of the Investigator.

E. The Investigator will prepare a written report, making relevant findings of fact, within fifteen (15) Business Days of receiving the complaint. Additional time may be taken for extenuating circumstances such as the unavailability of a key witness. **If additional time is needed, the Complainant and the Respondent should shall be informed.** The Investigator will provide the report to the Respondent's vice president or university director.

F. The appropriate vice president or university director will review the report and confer with the Equal Opportunity Officer/Title IX Coordinator. The vice president or university director will render a determination. The vice president or university director will convey this determination in writing to the Complainant and to the Respondent, with copies to the Equal Opportunity Officer/Title IX Coordinator **within fifteen (15) business days of receiving the investigator's report.** Information released in the determination must be limited so as to not compromise confidential personnel information.

G. The Complainant and/or the Respondent may appeal the decision of the vice president or university director by ~~taking the following action: 1. The Complainant or the Respondent may appeal the decision by~~ directing a letter of appeal to the university president within five (5) Business Days of receiving the vice president's or university director's decision.  
~~2.~~If no appeal is made, the vice president or university director will notify all parties that the complaint is closed.

H. If the matter is appealed to the university president he or she will review the report and may confer with the vice president or university director and Equal Opportunity Officer/Title IX Coordinator.

1. If the university president concurs with the decision of the vice president or university director, his or her decision will be final. The university president will affirm the vice president's or university director's determination in writing to the Complainant, the Respondent, the vice president or university director and the Equal Opportunity Officer/Title IX Coordinator as soon as possible, usually within ten (10) days of receipt of the appeal.

2. If the university president does not concur with the decision of the vice president or university director he or she may:

a. Reverse the determination of the vice president or university director and convey his or her decision in writing to the Complainant, the Respondent, the vice president or university director and the Equal Opportunity Officer/Title IX Coordinator as soon as possible and the **complaint** is closed; or

b. Send the matter back to the vice president or university director with instructions to amend the determination. The university president's decision will be conveyed in writing to the Complainant, the Respondent, the vice president or university director and the Equal Opportunity Officer/Title IX Coordinator as soon as reasonably possible and the complaint is closed.

I. If a complaint involves alleged conduct on the part of the University's President, the Chairperson of the University's Board of Governors will designate the Investigating Officer. Based on the information gathered by the investigation, the Board of Governors will prepare and issue the written report determining the complaint. The determination of the Board of Governors is final and not subject to appeal.

J. If a complaint involves alleged conduct on the part of the Title IX Coordinator or any administrator ranked higher than the Title IX Coordinator, the University's President will designate the Investigating Officer. Based on the information gathered by the investigation, the President will prepare and issue the written report determining the complaint. The determination of the President is final and not subject to appeal.

### **Protection of Complainants, Respondents and Witnesses**

Retaliation against someone for reporting or participating in an investigation and related processes is prohibited. It is a violation of this policy to retaliate against any member of the University Community who reports or assists in making a complaint of sexual misconduct or who participates in the investigation of a complaint in any way. Persons who believe they have been retaliated against in violation of this policy should make a complaint in the manner set forth in this section. Retaliation includes threats, intimidation, reprisals and/or adverse employment or educational actions against a person based on his/her claim of discrimination or participation in the investigation, report, remedial or disciplinary processes provided for in the policy.

#### **Rights of the Complainant**

1. To be treated with respect by University officials.
2. To be free from retaliation.

3. To have access to campus support resources (counseling and mental health services; University health services).
4. To have an advisor of his/her choice accompany him/her to all interviews, meetings and proceedings.
5. To use either the Informal Procedure or the Formal Procedure to resolve an allegation.
6. To have an opportunity to present a list of potential witnesses and to provide evidence to the investigator.
7. When the complainant is not the reporting party, the complainant has full rights to participate in the process for resolution.
8. To be informed in writing of the findings and resolution within a reasonable amount of time, normally within thirty (30) business days. If the situation requires a longer timeframe, both the complainant and the respondent should be notified in writing, including an estimate of the extension of time that is necessary.
9. To report the matter to law enforcement (if applicable) and to have assistance in making that report.
10. To have an opportunity to appeal the findings and sanctions.
11. To receive notice of witnesses to be interviewed, if the Formal Procedure is used.

#### Rights of the Respondent/Accused

1. To be treated with respect by University officials.
2. To have access to campus support resources (counseling and mental health services; University health services), unless suspended from campus pending the completion of the process.
3. To have an advisor of his/her choice accompany him/her to all interviews, meetings and proceedings.
4. To have an opportunity to present a list of potential witnesses and to provide evidence to the investigator.
5. To receive in writing, notice of the policies alleged to have been violated within five (5) business days of the filing of the complaint.
6. To have complaints heard in accordance with these procedures.
7. To be informed in writing of the findings and resolution within a reasonable amount of time, normally within thirty (30) business days. If the situation requires a longer timeframe, both the complainant and the respondent should be notified in writing, including an estimate of the extension of time that will be necessary.
8. To have an opportunity to appeal the findings and sanctions.
9. To receive notice of witnesses to be interviewed if the Formal Procedure is used.

#### **Timelines**

Timelines are provided within this document as guidelines. If the Investigator and/or Equal Opportunity Officer/Title IX Coordinator need more time to complete necessary tasks at any stage in the procedure, they will communicate to both parties as appropriate.

## **False Complaints**

Any complaints of discrimination, including harassment, that the Complainant knew to be false, may result in corrective or disciplinary action, up to and including dismissal or suspension, against the Complainant.

**GAC Summary:** There were a few clerical changes noted and these have been made. It was noted that a definition of hostile environment should be added and Sally Sanders indicated she would provide it in the future. With these revisions, this proposal will be forwarded to the President for his approval.

**Presidential Action:** This proposal was signed by the President on June 2, 2016.

## **GAC #15-15 – Sexual Misconduct Policy & Complaint Resolution Procedures**

**Source of Proposal:** Academic Affairs

**Purpose of Proposal:** Policy Revision / For Information

**Current Policy or Procedure:** MWSU Policy Guide, University Policies Section, Sexual Misconduct Policy & Complaint Resolution Procedures

**Proposed Policy or Procedure:**

## **SEXUAL MISCONDUCT POLICY**

### **I. POLICY STATEMENT**

Missouri Western State University (the “University”) is committed to providing a learning, working, and living environment that promotes personal integrity, civility, and mutual respect in an environment free of discrimination on the basis of sex. The University considers sex discrimination in all its forms to be a serious offense. Sex discrimination constitutes a violation of this policy, is unacceptable, and will not be tolerated. Sex discrimination includes discrimination on the basis of pregnancy, gender identity, and failure to conform to stereotypical notions of femininity and masculinity.

Sexual harassment, whether verbal, physical, or visual, that is based on sex is a form of prohibited sex discrimination. Sexual harassment also includes sexual violence. The specific definitions of sexual harassment and sexual violence, including examples of such conduct, are set forth below.

### **II. SCOPE**

This policy applies to administrators, faculty, and other University employees; students; applicants for employment; customers; third-party contractors; and all other persons that participate in the University’s educational programs and activities, including third-party visitors on campus (the “University Community”). This policy prohibits sex discrimination, sexual harassment, and sexual violence even when the complainant and alleged perpetrator are members of the same sex, and it applies regardless of national origin, immigration status, or

citizenship status. The University's prohibition on sex discrimination and sexual harassment extends to all aspects of its educational programs and activities, including, but not limited to, admissions, employment, academics, athletics, housing, and student services.

The University has jurisdiction over Title IX-related complaints regarding conduct that occurred on campus, during or at an official University program or activity (regardless of location), or off campus when the conduct creates a hostile environment on campus. The University will investigate all complaints made under this policy and, if necessary, take action to prevent the recurrence of sex discrimination and remedy its effects.

### **III. TITLE IX STATEMENT**

It is the policy of the University to comply with Title IX of the Education Amendments of 1972 and its implementing regulations, which prohibit discrimination based on sex in the University's educational programs and activities. Title IX and its implementing regulations also prohibit retaliation for asserting claims of sex discrimination. The University has designated the following Title IX Coordinator to coordinate its compliance with Title IX and to receive inquiries regarding Title IX, including complaints of sex discrimination:

Adam McGowan  
Title IX Coordinator  
231 Blum Union  
4525 Downs Drive  
St. Joseph, Missouri 64507  
816-271-4557  
[amcgowan@missouriwestern.edu](mailto:amcgowan@missouriwestern.edu)

The University has also designed the following Deputy Title IX Coordinators to assist the Title IX Coordinator in carrying out his/her duties:

Sally Sanders  
Director of Human Resources /Equal Opportunity Officer  
117 Popplewell Hall  
4525 Downs Drive  
St. Joseph, MO 64507  
816-271-4587  
[sanders@missouriwestern.edu](mailto:sanders@missouriwestern.edu)

Judy Grimes  
Associate Vice President of Student Affairs  
228 Blum Union  
4525 Downs Drive St. Joseph, Missouri 64507  
816-271-5991  
[grimes@missouriwestern.edu](mailto:grimes@missouriwestern.edu)



A person may also file a complaint of sex discrimination with the United States Department of Education's Office for Civil Rights regarding an alleged violation of Title IX by visiting [www2.ed.gov/about/offices/list/ocr/complaintintro.html](http://www2.ed.gov/about/offices/list/ocr/complaintintro.html) or by calling 1-800-421-3481.

## **IV. SEXUAL HARASSMENT**

### **A. Definition of Sexual Harassment**

Sexual advances, requests for sexual favors, and other verbal, physical, or visual conduct of a sexual nature constitute sexual harassment when:

- Submission to such conduct is made or threatened to be made, either explicitly or implicitly, a term or condition of an individual's employment or education
- Submission to or rejection of such conduct by an individual is used or threatened to be used as the basis for academic or employment decisions affecting that individual, or
- Such conduct has the purpose or effect of substantially interfering with an individual's academic or professional performance or creating what a reasonable person would perceive as an intimidating, hostile, or offensive employment, education, or living environment

### **B. Examples of Sexual Harassment**

Some examples of sexual harassment include:

- Pressure for a dating, romantic, or intimate relationship
- Unwelcome touching, kissing, hugging, rubbing, or massaging
- Pressure for sexual activity
- Unnecessary references to parts of the body
- Sexual innuendos, jokes, or humor
- Making sexual gestures
- Displaying sexual graffiti, pictures, videos or posters
- Using sexually explicit profanity
- Asking about, or telling about, sexual fantasies, sexual preferences or sexual activities
- E-mail and Internet use that violates this policy
- Leering or staring at someone in a sexual way, such as staring at a person's breasts or groin
- Sending sexually explicit emails or text messages
- Commenting on a person's dress in a sexual manner
- Giving unwelcome personal gifts such as flowers, chocolates, or lingerie that suggest the desire for a romantic relationship
- Commenting on a person's body, gender, sexual relationships, or sexual activities
- Sexual violence (as defined below)

### **C. Sexual Violence**

#### **1. The Definition of Sexual Violence**

Sexual violence is a form of prohibited sexual harassment. Sexual violence includes physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent because of his or her temporary or permanent mental or physical incapacity, because of his or her youth, or because of his or her incapacitation due to the use of drugs and/or alcohol.

## 2. Examples of Sexual Violence

Some examples of sexual violence include:

- Rape or sexual assault: sexual intercourse (anal, oral, or vaginal) by a man or woman upon a man or woman without consent
- Unwilling sexual penetration (anal, vaginal, or oral) with any object or body part that is committed by force, threat, or intimidation
- Sexual touching with an object or body part, by a man or woman upon a man or woman, without consent
- Sexual touching with an object or body part, by a man or woman upon a man or woman, committed by force, threat, or intimidation
- Knowingly transmitting a sexually transmitted disease to another
- The use of force or coercion to effect sexual intercourse or some other form of sexual contact with a person who has not given consent
- Having sexual intercourse with a person who is unconscious because of drug or alcohol use
- Hazing that involves penetrating a person's vagina or anus with an object
- Use of the "date rape drug" to effect sexual intercourse or some other form of sexual contact with a person
- One partner in a romantic relationship forcing the other to have sexual intercourse without the partner's consent
- Exceeding the scope of consent by engaging in a different form of sexual activity than a person has consented to
- Knowingly transmitting a sexually transmitted disease such as HIV to another person through sexual activity
- Coercing someone into having sexual intercourse by threatening to expose their secrets
- Secretly videotaping sexual activity where the other party has not consented
- Prostituting another student

### **D. Sexual Misconduct**

Collectively, sex discrimination, sexual harassment, and sexual violence will be referred to as "sexual misconduct" through the remainder of this policy and the complaint resolution procedures.

### **E. Definition of Consent**

Lack of consent is a critical factor in determining whether sexual violence has occurred. Consent is informed, freely given, and mutually understood. Consent requires an affirmative act or statement by each participant. Consent is not passive.

- If coercion, intimidation, threats, and/or physical force are used, there is no consent.
- If a person is mentally or physically incapacitated or impaired by alcohol or drugs such that the person cannot understand the fact, nature, or extent of the sexual situation, there is no consent.
- If a person is asleep or unconscious, there is no consent.
- Consent to one form of sexual activity does not imply consent to other forms of sexual activity.
- Consent can be withdrawn. A person who initially consents to sexual activity is deemed not to have consented to any sexual activity that occurs after he or she withdraws consent.

## **F. Domestic Violence, Dating Violence, and Stalking**

The crimes of domestic violence, dating violence and stalking can also constitute sexual misconduct when motivated by a person's sex. These crimes, no matter the motivation behind them, are a violation of this policy.

### **1. Domestic Violence**

"Domestic violence" includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of a victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse or the victim under the domestic or family violence laws of the jurisdiction [...], or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

- Missouri's definition of domestic violence can be found at Mo. Rev. Stat. § 455.010.
- Under Missouri law, domestic violence also includes the crime of "domestic assault" which can be found at Mo. Rev. Stat. §§ 565.072-565.074.

### **2. Dating Violence**

"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:

- (i) The length of the relationship.
- (ii) The type of relationship.
- (iii) The frequency of interaction between the persons involved in the relationship.
- Missouri law does not specifically define dating violence, but conduct of this nature is covered by Missouri's definitions of domestic violence and domestic assault.

### **3. Stalking**

"Stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) fear for his or her safety or the safety of others; or

(B) suffer substantial emotional distress.

- Missouri's definition of stalking can be found at Mo. Rev. Stat. § 455.010 and § 565.225.

## **V. ROLES AND RESPONSIBILITIES**

### **A. Title IX Coordinator**

It is the responsibility of the Title IX Coordinator to: (1) receive complaints under this policy; (2) coordinate dissemination of information and education and training programs; (3) assist members of the University Community in understanding that sexual misconduct is prohibited by this policy; (4) answer questions about this policy; (5) appoint investigators and ensure that they are trained to respond to and investigate complaints of sexual misconduct; (6) ensure that employees and students are aware of the procedures for reporting and addressing complaints of sexual

misconduct; and (7) to implement the Complaint Resolution Procedures or to designate appropriate persons for implementing the Complaint Resolution Procedures.

### **B. Administrators, Deans, Department Chairs, and Other Managers**

It is the responsibility of administrators, deans, department chairs, and other managers (i.e., those that formally supervise other employees) to:

- Inform employees under their direction or supervision of this policy
- Work with the Title IX Coordinator to implement education and training programs for employees and students
- Implement any corrective actions that are imposed as a result of findings of a violation of this policy

### **C. All Employees**

It is the responsibility of all employees to review this policy and comply with it.

### **D. Students**

It is the responsibility of all students to review this policy and comply with it.

### **E. The University**

When the University is aware that a member of the University Community may have been subjected to or affected by conduct that violates this policy, the University will take prompt action, including a review of the matter and, if necessary, an investigation and appropriate steps to stop and remedy the sexual misconduct. The University will act in accordance with its Complaint Resolution Procedures.

## **VI. COMPLAINTS**

### **A. Making a Complaint**

#### **1. Faculty and Employees**

All University employees have a duty to promptly report sexual misconduct to the Title IX Coordinator when they observe such conduct or a report of sexual conduct is made to them. This does not apply to the employees who may maintain confidentiality as described in Section VI.A.3 of this policy.

#### **2. Students**

Students are encouraged to file a report under this policy when they experience or witness sexual misconduct. Students who wish to report sexual misconduct should file a complaint with the Title IX Coordinator or Deputy Title IX Coordinator. Students should be aware that all faculty and employees at the University, except those who may maintain confidentiality as described in Section VI.A.3 of this policy, have an obligation to report sexual misconduct to the Title IX Coordinator if they observe such conduct or receive a report of such conduct.

Students may also file a complaint with the United States Department of Education's Office for Civil Rights, as set forth in Section III above.

### 3. Confidential Reports

If a victim desires to talk confidentially about his or her situation, s/he may contact: Missouri Western State University Counseling Center, located at 203 Eder Hall; 816-271-4327. Hours are 8am-4:30pm, Monday through Friday; or Missouri Western State University Esry Health Center, located at 203 Blum Union; 816-271-4495; [health@missouriwestern.edu](mailto:health@missouriwestern.edu). Hours are 8am-4:30pm, Monday through Friday. They are available to assist you and will not report your circumstances to the University for investigation without your permission. Notwithstanding, Missouri Western State University Counseling Center, (203 Eder Hall; 816-271-4327) or Missouri Western State University Esry Health Center, (203 Blum Union; 816-271-4495; [health@missouriwestern.edu](mailto:health@missouriwestern.edu)) will report a crime to the appropriate University personnel for inclusion in the University's annual crime statistics disclosure, though your name will be withheld from this report.

### 4. Content of the Complaint

So that the University has sufficient information to investigate a complaint, the complaint should include: (1) the date(s) and time(s) of the alleged conduct; (2) the names of all person(s) involved in the alleged conduct, including possible witnesses; (3) all details outlining what happened; and (4) contact information for the complainant so that the University may follow up appropriately.

### 5. Conduct that Constitutes a Crime

Any person who wishes to make a complaint of sexual misconduct that also constitutes a crime—including sexual violence, domestic violence, dating violence, or stalking—is encouraged to make a complaint to local law enforcement. If requested, the University will assist the complainant in notifying the appropriate law enforcement authorities. In the event of an emergency, please contact 911. A victim may decline to notify such authorities.

### 6. Special Guidance Concerning Complaints of Sexual Violence, Domestic Violence, Dating Violence, or Stalking

If you are the victim of sexual violence (including sexual assault), domestic violence, dating violence, or stalking, do not blame yourself. These crimes are never the victim's fault. When physical violence of a sexual nature has perpetrated against you, the University recommends that you immediately go to the emergency room of a local hospital and contact local law enforcement (911 if emergency), in addition to making a prompt complaint to the Title IX Coordinator or Deputy Student Coordinator. You may also wish to call the National Sexual Assault Hotline at 800-656-HOPE.

If you are the victim of sexual violence, domestic violence, or dating violence, do everything possible to preserve evidence by making certain that the crime scene is not disturbed.

Preservation of evidence may be necessary for proof of the crime or in obtaining a protection order. Victims of sexual violence, domestic violence, or dating violence should not bathe, urinate, douche, brush teeth, or drink liquids until after they are examined and, if necessary, a rape examination is completed. Clothes should not be changed. When necessary, seek immediate medical attention at an area hospital and take a full change of clothing, including shoes, for use after a medical examination.

It is also important to take steps to preserve evidence in cases of stalking, to the extent such evidence exists. In cases of stalking, evidence is more likely to be in the form of letters, emails, text messages, etc. rather than evidence of physical contact and violence.

Once a complaint of sexual violence, domestic violence, dating violence, or stalking is made, the complainant has several options such as, but not limited to:

- contacting parents or a relative
- seeking legal advice
- seeking personal counseling (always recommended)
- pursuing legal action against the perpetrator
- pursuing disciplinary action
- requesting that no further action be taken

A complainant who makes a claim related to sexual violence, domestic violence, dating violence, or stalking will be given a copy of the document titled "Explanation of Rights and Options After Filing a Complaint of Sexual Violence, Domestic Violence, Dating Violence, or Stalking."

#### 7. Vendors, Contractors, and Third-Parties

This policy applies to the conduct of vendors, contractors, and third parties. If any of these people believe they have been subject to sexual misconduct in violation of this policy should make a report to the Title IX Coordinator. They may also file a complaint with the United States Department of Education's Office for Civil Rights, as set forth in Section III above.

Likewise, members of the University Community can file complaints under this policy against vendors, contractors, and third parties.

#### 8. Retaliation

It is a violation of this policy to retaliate against any member of the University Community who reports or assists in making a complaint of sexual misconduct or who participates in the investigation of a complaint in any way. Persons who believe they have been retaliated against in violation of this policy should make a complaint in the manner set forth in this section.

#### 9. Protecting the Complainant

Pending final outcome of an investigation in accordance with the Complaint Resolution Procedures, the University will take steps to protect the complainant from further discrimination or harassment. This may include assisting and allowing the complainant to change his or her academic, transportation, work, or living situation if options to do so are reasonably available. Such changes may be available regardless of whether the victim chooses to report the crime to campus police or local law enforcement. If a complainant has obtained an order of protection, temporary restraining order or other no contact order against the alleged perpetrator from a criminal, civil, or tribal court, the complainant should provide such information to the Title IX Coordinator or Deputy Title IX Coordinator. The University will take all reasonable and legal action to implement the order.

## **B. Timing of Complaints**

There is no statute of limitations for complaints under the Sexual Misconduct Policy. However, the University encourages persons to make complaints of sexual misconduct as soon as possible because late reporting may limit the University's ability to investigate and respond to the conduct complained of.

## **C. Investigation and Confidentiality**

All complaints of sexual misconduct will be promptly and thoroughly investigated in accordance with the Complaint Resolution Procedures, and the University will take disciplinary action where appropriate. The University will make reasonable and appropriate efforts to preserve an individual's privacy and protect the confidentiality of information when investigating and resolving a complaint. However, because of laws relating to reporting and other state and federal laws, the University cannot guarantee confidentiality to those who make complaints.

In the event a complainant requests confidentiality or asks that a complaint not be investigated, the University will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. If a complainant insists that his or her name not be disclosed to the alleged perpetrator, the University's ability to respond may be limited. The University reserves the right to initiate an investigation despite a complainant's request for confidentiality in limited circumstances involving serious or repeated conduct or where the alleged perpetrator may pose a continuing threat to the University Community.

The Title IX Coordinator is the person responsible for evaluating requests for confidentiality.

## **D. Resolution**

If a complaint of sexual misconduct is found to be substantiated, the University will take appropriate corrective and remedial action to prevent the recurrence of the conduct and correct its discriminatory effects. Students, faculty, and employees found to be in violation of this policy will be subject to discipline up to and including written reprimand, suspension, demotion, termination, or expulsion. Affiliates and program participants may be removed from University programs and/or prevented from returning to campus. Remedial steps may also include counseling for the complainant, academic, transportation, work, or living accommodations for the complainant, separation of the parties, and training for the respondent and other persons.

## **E. Bad Faith Complaints**

While the University encourages all good faith complaints of sexual misconduct, the University has the responsibility to balance the rights of all parties. Therefore, if the University's investigation reveals that a complaint was knowingly false, the complaint will be dismissed and the person who filed the knowingly false complaint may be subject to discipline.

## **VII. ACADEMIC FREEDOM**

While the University is committed to the principles of free inquiry and free expression, sexual misconduct is neither legally protected expression nor the proper exercise of academic freedom.

## **VIII. EDUCATION**

Because the University recognizes that the prevention of sexual misconduct, as well as domestic violence, dating violence, and stalking, is important, it offers educational programming to a variety of groups such as: campus personnel; incoming students and new employees participating in orientation; and members of student organizations. Among other elements, such training will cover relevant definitions, procedures, and sanctions; will provide safe and positive options for bystander intervention; and will provide risk reduction information, including recognizing warning signs of abusive behavior and how to avoid potential attacks. To learn more about education resources, please contact the Title IX Coordinator.

## **SEXUAL MISCONDUCT: COMPLAINT RESOLUTION PROCEDURES**

### **I. GENERAL PRINCIPLE**

#### **A. Applicability**

These Complaint Resolution Procedures apply to the resolution of all reports under the Sexual Misconduct Policy. They apply to the resolution of complaints against students, faculty, administrators, staff, and third parties, and they are the exclusive means of resolving complaints of sexual misconduct.

#### **B. Administration**

For purposes of these complaint resolution procedures, "Investigating Officer" means the person appointed by the Title IX Coordinator or Deputy Title IX Coordinator. The Title IX Coordinator or the Deputy Title IX Coordinator will appoint the Investigating Officer from the pool of trained investigators. The Investigating Officer shall have responsibility for administering these complaint resolution procedures. At their discretion, the Title IX Coordinator or Deputy Title IX Coordinator may appoint multiple Investigating Officers to work together in administering these complaint resolution procedures.

#### **C. Promptness, Fairness and Impartiality**

These procedures provide for prompt, fair, and impartial investigations and resolutions. The Investigating Officer shall discharge his or her obligations under these complaint resolution procedures fairly and impartially. If the Investigating Officer determines that he or she cannot apply these procedures fairly and impartially because of the identity of a complainant, respondent, or witness, or due to any other conflict of interest, the Investigating Officer shall inform the Title IX Coordinator or Deputy Title IX Coordinator so that another appropriate individual can be designated to administer these procedures.

#### **D. Training**

These procedures will be implemented by officials who receive annual training on the issues related to sexual misconduct, domestic violence, dating violence, stalking, etc. In addition, training includes investigation and hearing processes that protect the safety of victims and promotes accountability. The safety and rights of all involved shall always be considered.



## II. INVESTIGATION AND RESOLUTION OF THE COMPLAINT

### A. Preliminary Matters

#### 1. Timing of the Investigation

The University will endeavor to conclude its investigation and resolution of the complaint within sixty (60) calendar days of receiving it. Both the complainant and the respondent will be given periodic updates regarding the status of the investigation. If either the complainant or respondent needs additional time to prepare or to gather their witnesses or information, they shall make a request to the Investigating Officer in writing explaining how much additional time is needed and why it is needed. The Investigating Officer shall respond to any such request within three (3) business days.

#### 2. Informal Resolution

Informal means of resolution, such as mediation, may be used in lieu of the formal investigation and determination procedure. However, informal means may only be used with the complainant's voluntary cooperation and the involvement of the Title IX Coordinator or Deputy Title IX Coordinator. The complainant, however, will not be required to work out the problem directly with the respondent. Moreover, the complainant may terminate any such informal means at any time. The Respondent must agree to an informal resolution of the complaint. In any event, informal means, even on a voluntary basis, will not be used to resolve complaints alleging any form of sexual violence.

#### 3. Interim Measures

At any time during the investigation, the Investigating Officer, in coordination with the Title IX Coordinator or Deputy Title IX Coordinator, may determine that interim remedies or protections for the parties involved or witnesses are appropriate. These interim remedies may include separating the parties, placing limitations on contact between the parties, suspension, or making alternative class-placement or workplace arrangements. Failure to comply with the terms of these interim remedies or protections by either party may constitute a separate violation of the Sexual Misconduct Policy.

#### 4. Support Person

During the investigation process, both a complainant and a respondent may ask a support person to accompany him or her at all stages of the process. In cases involving multiple complainants or respondents, the support person cannot be another complainant or respondent. The support person does not serve as an advocate on behalf of the complainant or respondent and may not be actively involved in any proceedings, and must agree to maintain the confidentiality of the process.

#### 5. Pending Criminal Investigation

Some instances of sexual misconduct may also constitute criminal conduct. In such instances, the complainant is encouraged to file a report with the appropriate law enforcement authorities and, if requested, the University will assist the complainant in doing so. The pending

status of a criminal investigation, however, does not relieve the University of its responsibilities under Title IX. Therefore, to the extent that doing so does not interfere with any criminal investigation, the University will proceed with its own investigation and resolution of the complaint.

## 6. Rights of the Parties

During the investigation and resolution of a complaint, the complainant and respondent shall have equal rights. They include:

- To be treated with respect by University officials
- To be free from retaliation
- To have access to campus support resources (counseling and mental health services and University health services)
- To have a support person of his/her choice accompany him/her to all interviews, meetings and proceedings
- To have equal opportunity to identify and have considered, witnesses and other relevant evidence
- To have similar and timely access to all information considered by the Investigating Officer
- To have equal opportunity to review any statements or evidence provided by the other party
- To have equal access to review and comment upon any information independently developed by the Investigating Officer

### **B. Commencement of the Investigation**

Once a complaint is made, the Investigating Officer will commence an investigation as soon as practicable, but not later than seven (7) business days after the complaint is made. The purpose of the investigation is to determine whether it is more likely than not that the alleged behavior occurred and, if so, whether it constitutes sexual misconduct. During the course of the investigation, the Investigating Officer may receive counsel from University administrators, the University's attorneys, or other parties as needed.

In certain narrow circumstances, the Investigating Officer may commence an investigation even if the complainant requests that the matter not be pursued. In such a circumstance, the Investigating Officer will take all reasonable steps to investigate and respond to the matter in a manner that is informed by the complainant's articulated concerns.

### **C. Content of the Investigation**

During the investigation, the complainant will have the opportunity to describe his or her allegations and present supporting witnesses or other evidence. The respondent will have an opportunity to respond to the allegations and present supporting witnesses or other evidence. The Investigating Officer will review the statements and evidence presented and may, depending on the circumstances, interview others with relevant knowledge, review documentary materials, and take any other appropriate action to gather and consider information relevant to the complaint. All parties and witnesses involved in the investigation are expected to cooperate and

provide complete and truthful information.

#### **D. Resolution of Complaints against Student Respondents**

During the course of the investigation of complaints involving student respondents, the Investigating Officer will determine if there are disputed material facts. If there are disputed material facts, a hearing will be convened before a panel of three (3) Student Conduct Officers (not including the Investigating Officer) appointed by the Deputy Title IX Coordinator to resolve the disputed material facts. The hearing panel will appoint a Chair who will oversee the hearing and ensure it is carried out according to the following guidelines:

- The resolution of disputed material facts will be based on a majority vote of the hearing panel using a preponderance of the evidence standard.
- Members of the hearing panel must recuse themselves if they have a conflict of interest in the matter. The Title IX Coordinator or the Deputy Title IX Coordinator will appoint another Student Conduct Officer to replace a hearing panel member with a conflict of interest.
- The complainant and the respondent must have similar and timely access to any information that will be used at the hearing.
- When requested by the complainant, the University will make arrangements so that the complainant and respondent do not have to be present in the same room at the same time during the hearing.
- The parties will generally not be allowed to personally question each other, though they may submit questions to the hearing panel to ask the other party on their behalf. The hearing panel may choose not to ask the question if it is inappropriate or irrelevant to disputed material facts being resolved.
- Questioning about the complainant's sexual history with anyone other than the respondent will not typically be permitted, especially when the purpose is purely to show the complainant's sexual predisposition. However, in certain circumstances it may be permissible, such as if the complainant raises the issue or if it is of particular relevance to the current complaint.

The Chair is responsible for drafting a written statement that contains the factual findings of the hearing panel. The members of the panel will sign the written statement, and the Chair will provide it to the Investigating Officer.

Upon receipt of the hearing panel's statement, or at the conclusion of the investigation when there has been a determination that there are no disputed material facts, the Investigating Officer will prepare a draft written report. This document will explain the scope of the investigation, identify findings of fact, incorporate the hearing panel's findings (if any), and state whether any allegations in the complaint were found to be substantiated by a preponderance of the evidence resulting in a policy violation.

If it has been determined that sexual misconduct occurred, the Investigating Officer shall set forth in an addendum to the draft written report those steps necessary to maintain an environment free from discrimination and harassment and to protect the safety and well-being of the complainant and other members of the University Community. Such actions will also include reasonable steps to correct the effects of such conduct on the complainant and others and to prevent the recurrence of discrimination, harassment, and retaliation. Examples of such action

include: no-contact orders, classroom reassignment, the provision of counseling or other support services, training, and discipline for the perpetrator, including up to expulsion, or other appropriate institutional sanctions.

The Investigating Officer will then present the draft written report and addendum to the Title IX Coordinator or the Deputy Title IX Coordinator for review. The Title IX Coordinator or Deputy Title IX Coordinator will review the documents, revise as necessary, and finalize them. They will notify the parties of the outcome in writing as described in Section II.F, below.

The final written determination of the Title IX Coordinator or the Deputy Title IX Coordinator shall be final subject only to the right of appeal set forth in Section III, below.

#### **E. Resolution of Complaints against Employee and Third-Party Respondents**

During the resolution of complaints involving a respondent who is not a student, a hearing panel will not be utilized. At the conclusion of the Investigating Officer's investigation, the Investigating Officer will prepare a draft written report. The report will explain the scope of the investigation and identify findings of fact. The Investigating Officer will present the report to the Title IX Coordinator, and the Title IX Coordinator will review the draft, revise as necessary, and finalize it.

If the final written report finds that any allegations in the complaint were found to be substantiated by a preponderance of the evidence resulting in a policy violation, the Title IX Coordinator will consult with the University administrator with jurisdiction over the complainant and respondent to determine discipline and remedial measures. The Title IX Coordinator will prepare an addendum setting forth the discipline and remedial measures.

Examples of such measures include: no-contact orders, classroom reassignment, the provision of counseling or other support services, training, and discipline for the perpetrator, including up to termination, or other appropriate institutional sanctions. Discipline may be directly imposed or, in cases with faculty member respondents, a referral may be made for further disciplinary proceedings in accordance with faculty discipline proceedings.

The Title IX Coordinator will notify the parties of the outcome in writing as described in Section II.F, below.

#### **F. Notification of Outcome**

The Title IX Coordinator or Deputy Title IX Coordinator will provide written notification of the outcome of the investigation and any addendum to the complainant and the respondent within three (3) business days of its completion. If necessary, the version of the addendum provided to the complainant and/or respondent will be redacted to ensure that information concerning any remedial and/or disciplinary measures is disclosed in a manner consistent with Title IX, the Family Educational Rights and Privacy Act ("FERPA"), and the Clery Act, as explained by the April 4, 2011 Dear Colleague Letter issued by the U.S. Department of Education, available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>.

## **G. Special Procedure for Complaints Against the President, the Title IX Coordinator, or Other Administrators Ranked Higher than the Title IX Coordinator**

If a complaint involves alleged conduct on the part of the University's President, Title IX Coordinator shall obtain a written statement from the Complainant and the Respondent and submit those statements to the Chairperson of the University's Board of Governors. If the Chairperson of the University's Board of Governors finds sufficient evidence that a violation of policy occurred, he/she will designate the Investigating Officer. Based on the information gathered by the investigation, the Board of Governors will prepare and issue the written report determining the complaint. The determination of the Board of Governors is final and not subject to appeal.

If a complaint involves alleged conduct on the part of the Title IX Coordinator or any administrator ranked higher than the Title IX Coordinator, the University's President will designate the Investigating Officer. Based on the information gathered by the investigation, the President will prepare and issue the written report determining the complaint. The determination of the President is final and not subject to appeal.

### **III. APPEALS**

#### **A. Grounds of Appeal**

The complainant or respondent may appeal the determination of a complaint only on the following grounds

- There is a substantial likelihood that newly discovered information, not available at the time evidence was presented to the Investigating Officer or hearing panel, would result in a different decision
- There was a procedural error significant enough to call the outcome into question
- There was a clear error in factual findings
- Bias or prejudice on the part of the Investigating Officer and/or hearing panel
- The punishment or the corrective action imposed is disproportionate to the offense

#### **B. Method of Appeal**

In cases where there is a student respondent, appeals must be filed with the Vice-President of Student Affairs. In cases where there is a faculty respondent, appeals must be filed with the Provost. In cases where there is a non-faculty employee or third-party respondent, appeals must be filed with the Vice-President for Financial Planning and Administration. In this capacity, the Vice-President of Student Affairs, Provost, and Vice-President for Financial Planning and Administration will be referred to as "Appeal Officials." The appeal must be filed within ten (10) business days of receipt of the written report determining the outcome of the complaint. The appeal must be in writing and contain the following:

- Name of the complainant
- Name of the respondent
- A statement of the determination of the complaint, including corrective action if any

- A detailed statement of the basis for the appeal including the specific facts, circumstances, and argument in support of it
- Requested action, if any

The appellant may request a meeting with the appropriate Appeal Official, but the decision to grant a meeting is within the Appeal Official's discretion. However, if a meeting is granted, then the other party will be granted a similar opportunity.

#### **IV. RESOLUTION OF THE APPEAL**

The Appeal Official will resolve the appeal within fifteen (15) business days of receiving it and may take any and all actions that he/she determines to be in the interest of a fair and just decision. The decision of the Appeal Official is final. The Appeal Official shall issue a short and plain, written statement of the resolution of the appeal, including any changes made to the Title IX Coordinator's previous written determination. The written statement shall be provided to the complainant, respondent, and the Title IX Coordinator within three (3) business days of the resolution.

In some cases involving faculty member respondents, the discipline imposed may result in an additional process following the appeal.

#### **V. DOCUMENTATION**

Throughout all stages of the investigation, resolution, and appeal, the Investigating Officer, the Title IX Coordinator, the Deputy Title IX Coordinator, and the Appeal Officials as the case may be, are responsible for maintaining documentation of the investigation and appeal, including documentation of all proceedings conducted under these complaint resolution procedures, which may include written findings of fact, transcripts, and audio recordings.

#### **VI. INTERSECTION WITH OTHER PROCEDURES**

These complaint resolution procedures are the exclusive means of resolving complaints alleging violations of the Sexual Misconduct Policy. To the extent there are any inconsistencies between these complaint resolution procedures and other University grievance, complaint, or discipline procedures, these complaint resolution procedures will control the resolution of complaints alleging violations of the Sexual Misconduct Policy.

**GAC Summary:** It was indicated that title corrections would be made throughout the document now that the Title IX Coordinator has been hired. Also, under section G., the last sentence in the first paragraph should read "The determination of the Board of Governors is final and not subject to appeal."

The entire policy with the title changes and clerical correction is attached and will be effective immediately after approved by the President.

**Presidential Action:** This proposal was signed by the President on June 2, 2016.

Respectfully submitted,

Jennie McDonald  
Secretary