

Mount Mary University
Policy Against Sexual Harassment and Associated Grievance Procedures¹

Revised and adopted on June 25, 2021

SECTION 1. PROHIBITION OF DISCRIMINATION ON THE BASIS OF SEX

Mount Mary University (“University”) promotes an atmosphere of care and respect grounded in the University’s core values, Christian principles, and mission to develop the whole person. As such, the University does not discriminate on the basis of sex in any of its education or employment programs or activities. Title IX of the Education Amendments Act of 1972 (“Title IX”), its regulations, and certain other federal and state laws prohibit discrimination in such a manner. Under Title IX, discrimination on the basis of sex includes sexual harassment.

Title IX’s requirement not to discriminate in any of the University’s education programs or activities applies to both students and employees and extends to both admission and employment. Inquiries about the applicability of Title IX and its regulations to the University may be referred to the University’s Title IX Coordinator, the Assistant Secretary for Civil Rights of the United States Department of Education, or both:

Title IX Coordinator
Keri Alioto
Vice President for Student Affairs
Caroline Hall 145
2900 Menomonee River Parkway
Milwaukee, WI 53222
aliotok@mtmary.edu
Phone: (414) 930-3372

April Forray
Senior Director of Human Resources
Notre Dame Hall 252
2900 Menomonee River Parkway
Milwaukee, WI 53222
forraya@mtmary.edu
Phone: (414) 930-3627

Assistant Secretary for Civil Rights
U.S. Dept. of Education Office for Civil Rights
400 Maryland Ave., SW
Washington, D.C. 20202-1100
1-800-421-3481; 1-800-877-8339 (TDD)
OCR@ed.gov

¹ This Policy is intended to comply with Title IX of the Education Amendments Act of 1972 (“Title IX”) and its regulations. To the extent that this Policy conflicts with Title IX or its regulations, Title IX and its regulations shall control.

The University is committed to fostering an environment free from discrimination on the basis of sex. To the extent that any other University policy regarding discrimination or harassment on the basis of sex (as defined by Title IX) conflicts with this Policy, this Policy shall control.

Any violation of this policy will not be tolerated in the University community.

Effective August 14, 2020, all reports or complaints of sexual harassment and all reports or complaints containing an allegation of sexual harassment shall be processed under this Policy.

SECTION 2. ROLE OF TITLE IX COORDINATOR

Contacting the Title IX Coordinator

The University has appointed two Title IX Coordinators to coordinate the University's efforts to comply with its responsibilities under Title IX. As of this Policy's most recent revision, the Title IX Coordinator's names and contact information are as follows:

Keri Alioto
Vice President for Student Affairs
Caroline Hall 145
2900 Menomonee River Parkway
Milwaukee, WI 53222
aliotok@mtmary.edu
Phone: (414) 930-3372

April Forray
Senior Director of Human Resources
Notre Dame Hall 252
2900 Menomonee River Parkway
Milwaukee, WI 53222
forraya@mtmary.edu
Phone: (414) 930-3627

The Title IX Coordinator's name and contact information shall be provided to all applicants for admission, applicants for employment, students, employees, and any professional organizations required to receive notice under Title IX and its regulations. The Title IX Coordinator's contact information shall be prominently displayed on the University's website and in each handbook or catalog made available to the above-identified individuals and entities.

Any person may report sex discrimination, including sexual harassment, to the Title IX Coordinator by mail, telephone, or by electronic mail, using the contact information listed above, via the [Sexual Misconduct and Harassment Anonymous Report Form](#) on MyMtMary, or by any other means that result in the Title IX Coordinator receiving the person's verbal or written report. Reports can be made to the Title IX Coordinator at any time, including during non-business hours.

Responsibilities

The Title IX Coordinators oversee the University's compliance with this Policy and Procedure. The Title IX Coordinators and/or designated staff will:

- Perform all responsibilities as mandated under Title IX and its regulations.
- Perform all responsibilities as set forth under this Policy.
- Communicate with all members of the University community regarding applicable law and policy and provide information about how individuals may access resources and reporting options.
- Maintain and implement applicable University policies to ensure institutional compliance with applicable law.
- Ensure that all students and employees have access to education and training regarding Title IX, related provisions of the Clery Act, and prohibited conduct defined in this Policy.
- Direct the provision of any interim supportive and protective measures (including oversight of the failure to abide by an interim protective measure).
- Appoint investigators, decision makers, advisors, and facilitators of informal resolution processes and ensure that there is no bias or conflict of interest within these roles.
- Oversee the prompt and equitable investigation and resolution of formal complaints of sexual harassment, ensuring due process and full compliance with all regulations throughout the process.
- Maintain centralized records of all reports, investigations, and resolutions in accordance with applicable recordkeeping requirements

The Title IX Coordinator maintains broad oversight responsibility but may delegate responsibilities under this Policy to designated administrators or external professionals who will have appropriate training and experience. When used in this Policy, the term Title IX Coordinator may include an appropriate designee.

SECTION 3. KEY DEFINITIONS

Consent - positive cooperation involving an act of free will, in the absence of coercion, intimidation, force or threat of force.

A person cannot give consent if unable to comprehend what is going on. A person may not consent if they are unconscious, frightened, physically or psychologically pressured, or forced, intimidated, or impaired because of a psychological condition and/or intoxicated by use of drugs or alcohol.

Consent to one act does not imply consent to another. Silence and passivity do not equal consent. Sexual activity with someone whom one reasonably should know to be mentally or physically incapacitated (e.g., by alcohol or other drug use, unconsciousness or blackout) is non-consensual. Incapacitation is a state wherein the person cannot make rational reasonable decisions because they lack the capacity to give knowing consent to sexual interaction. This includes a person whose incapacity results from mental disability, sleep, involuntary physical restraint, or the consumption of a rape drug. Possession, use and/or distribution of a rape drug is prohibited, and administering such a drug to another student or employee is a violation of University policy.

Education Programs or Activities - include locations, events, or circumstances over which the University exercises substantial control over the respondent (the person against whom the complaint is filed) and the context in which sexual harassment occurs. Education programs or activities also include any building owned or controlled by a student organization that is officially recognized by the University. This includes but is not limited to:

- Classes (virtual and face-to-face), University-sponsored student activities, student organization-sponsored student activities, University-sponsored athletic events, and residence hall-sponsored activities.
- University buildings, all University grounds, University owned housing (i.e. Caroline Hall, Lorenz Place, Mary John Place, and spaces shared with the University (i.e. Trinity Woods).

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

Supportive Measures – non-disciplinary, non-punitive individualized services offered as appropriate to the complainant and/or the respondent, 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. These measures cannot be unreasonably burdensome to the other party and are designed to restore or preserve equal access to the University’s education program or activity, protect safety of all parties or the University’s educational environment, or deter sexual harassment. Supportive measures may include:

- Counseling;
- Extensions of deadlines or other course-related adjustments;
- Modifications of work or class schedules;
- Campus escort services;
- Mutual restrictions on contact between the parties;
- Changes in work or housing locations;
- Leaves of absences;
- Increased security and monitoring of certain areas of the campus; and
- Other similar measures

Responsible Employee(s) – University employees, including the Title IX Coordinators and all Deans, who have the authority to take corrective action with respect to sexual harassment.

SECTION 4. GRIEVANCE PROCEDURE FOR COMPLAINTS OF DISCRIMINATION ON THE BASIS OF SEX THAT DO NOT INCLUDE AN ALLEGATION OF SEXUAL HARASSMENT

Please refer to the University’s Equal Employment Opportunity Policy in the Employee Handbook and the Discrimination and Harassment Policy in the Undergraduate and Graduate Student Handbook, incorporated herein, for information regarding the University’s procedure for processing and responding to complaints of discrimination based on sex other than sexual harassment.

SECTION 5. PROHIBITION OF SEXUAL HARASSMENT

As set forth in Section 1, this policy prohibits discrimination on the basis of sex. Discrimination on the basis of sex includes sexual harassment.

Sexual harassment is defined by Title IX as conduct on the basis of sex that satisfies one or more of the following:

- A University employee conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; or
- Sexual assault, dating violence, domestic violence, or stalking.

Sexual assault is defined as an offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation and includes the following classes of conduct: rape, sodomy, sexual assault with an object, fondling and incest.

Dating violence is defined as 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 length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Domestic violence is defined as felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the 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 of the victim under Wisconsin's domestic or family violence laws, 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 Wisconsin.

Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress.

SECTION 6. REPORTS OF SEXUAL HARASSMENT

Reports of Sexual Harassment

All students and employees are encouraged to report violations of this policy to the University. The University also encourages victims of sexual harassment to talk to someone about what happened so they can get the support they need, and so the University can respond appropriately. Some of these resources are confidential (i.e., they do not trigger a response obligation under Title

IX) while others are not confidential (i.e., they do trigger a response obligation from the University under Title IX).

Resources available to victims of sexual harassment include:

- **Contacting the Title IX Coordinator or any Responsible Employee.** Contact the Title IX Coordinator or any Responsible Employee (defined in Section 3 of this Policy). Speaking with the Title IX Coordinator or a Responsible Employee is not confidential and may trigger a response obligation from the University.
- **Filing an anonymous report.** File an anonymous report via the [Sexual Misconduct and Harassment Anonymous Report Form](#). This form is routed to the Title IX Coordinator, who will respond to the report in accordance with this Policy. Filing an anonymous report is not confidential and may trigger a response obligation from the University.

In order for the University to address concerns properly, it is important for the reporting individual to provide as many details as possible about the alleged sexual harassment. Persons choosing to file anonymous reports need to understand that there may be limits on the University's ability to address reports on an anonymous basis. The University does, however, take such reports seriously and will address reports to the greatest extent possible. Filing an anonymous report does not guarantee confidentiality. While the University will take requests for confidentiality seriously, it must also consider its obligations under Title IX and its responsibility to provide a safe and nondiscriminatory environment for all students, including the student who reported the sexual harassment, when that person is known to the University.

- **Seeking confidential support by contacting the campus Counseling Center** (see Section 9, Resources, for contact information). The Counseling Center staff can offer confidential resources, options, and advice without any obligation to report, unless the individual requests or consents to reporting, or if the individual fears for their safety or the safety of others. If unsure of someone's duties and ability to maintain privacy, ask the individual before talking to him/her. Talking to a member of the Counseling Center staff does not constitute reporting the incident to the University and will not trigger a response obligation under Title IX.
- **Filing a report with the Milwaukee Police Department** (see Section 9, Resources, for contact information).

Whether reporting to a University employee imputes actual knowledge to the University under Title IX (thereby triggering the University's response obligations) depends on that employee's responsibilities and authority at the University. Reporting sexual harassment to the following Responsible Employees is not confidential and imputes actual knowledge to the University:

- Title IX Coordinators
- Director of Human Resources
- Director of Student Engagement and Residence Life

- President
- Vice President for Academic Affairs
- Vice President for Enrollment Services
- Vice President of Finance and Administration
- Vice President of Alumnae and Donor Relations
- Vice President for Mission and Identity
- Vice President for Diversity, Equity and Inclusion
- Dean of School of Arts and Design and School of Business
- Dean of School of Natural & Health Sciences and Education
- Dean of School of Humanities, Social Sciences, and Interdisciplinary Studies

Reporting to these employees is not confidential and does trigger a response obligation from the University under Title IX. All such employees are obligated to immediately notify the Title IX Coordinator in the event they receive a report of sexual harassment. Failure to do so may result in discipline, up to and including termination.

Responding to Reports of Sexual Harassment

When the University has obtained actual knowledge of sexual harassment in an education program or activity, the Title IX Coordinator must promptly contact the complainant regarding supportive measures (as defined in Section 3). Specifically, the Title IX Coordinator must promptly contact the complainant to:

- Discuss the availability of supportive measures;
- Consider the complainant's wishes with respect to supportive measures;
- Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint; and
- Explain to the complainant the process for filing a formal complaint of sexual harassment as set forth herein.

While the Title IX Coordinator is initially obligated to reach out to the complainant regarding supportive measures, the respondent also has an equal right to supportive measures.

In each instance, the Title IX Coordinator must document their response to a report (or formal complaint) of sexual harassment and the basis for that response. This includes documenting that they have offered supportive measures to restore or preserve equal access to the University's education program or activity. If the Title IX Coordinator does not provide a complainant with supportive measures, then he/she must document the basis for not doing so.

The University shall maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality will not impair the University's ability to provide the supportive measures.

Before imposing any disciplinary sanctions or other actions that are not supportive measures against a respondent accused of engaging in sexual harassment, the University must follow the grievance process set forth in Section 7.

Emergency Removal

The University, and Decision Maker (in consultation with the Title IX Coordinator), reserves the right to remove a respondent from its education program or activity on an emergency basis. In order to do so, the University must first:

- Undertake an individualized safety and risk analysis;
- 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; and
- Provide the respondent with notice and an opportunity to challenge the decision immediately following the removal.

Subject to the above process, the University may remove a respondent without first having received a formal complaint of sexual harassment.

SECTION 7. GRIEVANCE PROCEDURE FOR FORMAL COMPLAINTS OF SEXUAL HARASSMENT AND COMPLAINTS INCLUDING ALLEGATIONS OF SEXUAL HARASSMENT

Formal Complaints of Sexual Harassment

Either a complainant or the Title IX Coordinator can file a formal complaint alleging sexual harassment against a respondent.

To constitute a formal complaint, the document must be filed by a complainant or signed by the Title IX Coordinator. The document must allege sexual harassment against a respondent and request that the University investigate the allegation of sexual harassment. A document filed by a complainant means a document or electronic submission (such as by electronic mail or through [Sexual Misconduct and Harassment Anonymous Report Form](#) on MyMtMary) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.

If the complainant chooses not to file a formal complaint, the Title IX Coordinator must either document his/her reasons for filing a formal complaint against the complainant's wishes or document his/her reasons for choosing not to file a formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party.

In limited circumstances, if a complainant does not sign a formal complaint, the Title IX Coordinator may sign a formal complaint on behalf of the University. In determining whether to file a formal complaint, the Coordinator will consider whether any of the following exist: violence, threat, pattern, predation, minors and/or the use of a weapon is evidenced. The Title IX Coordinator may consult with experts in making this determination, if deemed appropriate by the Title IX Coordinator.

At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the University's education program or activity with which the formal complaint is filed.

A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed above, and by submitting the [Sexual Misconduct and Harassment Anonymous Report Form](#) on MyMtMary.

Party Rights During the Grievance Process

Formal complaints of sexual harassment trigger the grievance process set forth in this Section 7. During the grievance process, the parties have the following rights:

- **Presumption of Being “Not Responsible”.** The respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- **Discussing Allegations.** The University cannot restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- **No Retaliation.** The University prohibits intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX or its regulations, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy, Title IX, or Title IX's regulations.

Intimidation, threats, coercion, or discrimination for the purpose of interfering with any right or privilege secured by Title IX or its regulations constitutes retaliation.

- **Advisors.** During the grievance process, all parties have the right to an advisor of their choice, who may be, but is not required to be, an attorney. The University may not limit the choice or presence of a party's advisor in any meeting or grievance proceeding. However, an advisor's active participation during the grievance process is limited to conducting cross-examination at the live hearing.
- **Equal Opportunity to Present Witnesses and Other Evidence.** The parties have an equal opportunity to present witnesses and other evidence, including fact and expert witnesses, and other inculpatory and exculpatory evidence. The parties also have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations in the formal complaint, including evidence upon which the University does not intend to rely in reaching a determination regarding responsibility.
- **Objective Evaluation of All Relevant Evidence.** The parties have a right to an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence.

- **Privacy Protections.** 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 unless the University has obtained the party's voluntary, written consent.
- **Privileged Information.** The grievance process may not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege (unless the privilege has been waived). Privileges include, but are not limited to: attorney-client privilege, marital privilege, religious advisor privilege, physician-patient privilege, and psychologist-patient privilege.
- **Credibility Determination.** Credibility determinations may not be based on a person's status as a complainant, respondent, or witness. The University cannot give credence to a person's statements simply because of the position he/she holds.
- **No Conflict of Interest or Bias.** Any individual designated by the University as a Title IX Coordinator, investigator, decision-maker, reviewer, or any person designated by the University to facilitate an informal resolution process, may not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

The grievance process (up to and including an appeals determination, if applicable) shall be completed in a reasonably prompt time frame, which the University designates as 75-90 calendar days from receipt of the formal complaint.

Temporary delays or limited extensions of time frames may be permitted for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as 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.

Administrative Leave

During the pendency of the grievance process, the University reserves the right to place a non-student employee respondent on administrative leave.

Standard of Evidence under this Grievance Procedure

The standard of evidence to be used for determining responsibility under this grievance procedure (and for all formal complaints of sexual harassment, including formal complaints against employees and students) is the preponderance of the evidence standard.

Initial Response to a Formal Complaint

Upon receipt of a formal complaint, the Title IX Coordinator shall promptly provide the following information in a written notice to the known parties:

- Notice of the grievance process, including informal resolution and the name of the individual assigned to conduct the investigation.

Note that any objections to an appointed investigator must be made in writing to the Title IX Coordinator within five (5) calendar days after notice has been provided. Objections must be based on actual bias or conflicts of interest. The Title IX Coordinator will determine if bias or a conflict of interest exists. In that event, the parties will be notified in writing of the name of the new investigator. Any objection to the new investigator will be made in accordance with this section.

- Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in 34 C.F.R § 106.30, including sufficient details known at the time and with sufficient time to prepare a response before any interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment under 34 C.F.R § 106.30, 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 grievance process.
- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, and who may inspect and review evidence.
- A statement informing the parties of any provisions in the University's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

Investigating a Formal Complaint

Upon receipt of a formal complaint and a determination that the complaint is subject to this grievance procedure, the assigned investigator shall investigate the formal complaint. Note that the University may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.²

The specific steps of the investigation will vary based on the nature of the allegations and other factors; however, the University's inquiry will be prompt, thorough and impartial. The investigation shall be completed within forty-five (45) calendar days of receipt of the formal complaint. The burden

² Where a grievance process involves more than one complainant or more than one respondent, references to the singular "party," "complainant," or "respondent" include the plural, as applicable.

of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the University and not on the parties.

The investigation process shall include, at minimum, individual meetings with the complainant and respondent to discuss the substance of the complaint and to identify witnesses (lay or expert) and other inculpatory or exculpatory evidence. The investigator shall provide advanced notice to the party, including the date, time, location, participants, and purpose of the investigative meeting at least seven (7) calendar days in advance of the meeting to provide sufficient time for the party to prepare to participate.

When investigating a formal complaint and throughout the grievance process, the University must 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 sufficient time for the party to prepare to participate.

Prior to the conclusion of the investigation, the investigator shall provide to the complainant and respondent (and their respective advisors, if any) the opportunity to review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including any evidence upon which the University does not intend to rely upon in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source.³

Such evidence will be sent in an electronic format to the parties and any identified party advisor (unless requested by a party or advisor to be received in hard copy format). Each party will be given at least ten (10) calendar days to submit to the investigator a written response to the evidence for consideration by the investigator prior to conclusion of the investigation and completion of the investigative report.

The investigator shall conclude the investigation by drafting a written investigative report that fairly summarizes the relevant evidence. The investigative report must also describe the procedural steps from receipt of the formal complaint through the conclusion of the investigation, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence.

Note that the following evidence and information is deemed not relevant or otherwise not subject to use in the grievance process: (1) information protected by a legally recognized privilege; (2) evidence about a complainant's sexual predisposition; (3) evidence about a complainant's prior sexual behavior unless it is offered to prove that someone other than the respondent committed the alleged conduct or it concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and is offered to prove consent; (4) any party's medical, psychological, and similar records unless the party has given voluntary written consent.

³ The University must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

Before the investigative report has been finalized, each party (and their respective advisors, if any) will be provided with a draft copy of the investigative report. The draft report will be provided in an electronic format (unless requested by a party or advisor to be received in hard copy format). Each party will be given five (5) calendar days to submit to the investigator any objections to the draft investigative report prior to its finalization.

The final investigative report will be sent to the parties and any identified party advisor at least ten (10) calendar days prior to the live hearing in electronic format (unless requested by a party or advisor to be received in hard copy format). The parties may review the final investigative report and provide a written response to the decision-maker no later than five (5) calendar days before hearing (discussed below).

Dismissing a Formal Complaint

Jurisdictional Dismissal. Under certain circumstances, a formal complaint of sexual harassment may not be subject to the jurisdiction of Title IX and this grievance procedure for complaints of sexual harassment set forth in this Section 7.

The University must investigate the allegations in a formal complaint. However, a formal complaint must be dismissed for purposes of sexual harassment under Title IX and its regulations (and removed from this grievance process) if:

- The conduct would not constitute sexual harassment as defined under 34 C.F.R § 106.30 even if proved;
- The conduct did not occur in the University's education program or activity; or
- The conduct did not occur against a person in the United States.

Dismissing a formal complaint of sexual harassment for any of these reasons does not preclude action under another of the University's policies prohibiting misconduct.

Discretionary Dismissal. The University may dismiss a formal complaint as subject to this grievance process if, at any time during the investigation or hearing:

- The complainant submits a written request for withdrawal to the Title IX Coordinator;
- The respondent is no longer enrolled at or employed by the University; or
- The specific circumstances prevent the University from gathering evidence sufficient to reach a determination.

Regardless of whether a formal complaint is subject to jurisdictional or discretionary dismissal, the Title IX Coordinator shall promptly notify the parties, simultaneously and in writing, of the dismissal and reasons therefor. Parties can appeal the dismissal decision (see below).

Live Hearing

Within thirty (30) calendar days following the conclusion of the investigation, the University will schedule a live hearing before an appointed decision-maker⁴ to reach a determination regarding responsibility.

Key aspects of the live hearing include:

- **Physical or Virtual Presence.** At the University's discretion, live hearings pursuant to this paragraph may be conducted either with all parties physically present in the same geographic location or with any or all parties, witnesses, and other participants appearing at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

At the request of either party, the University shall provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker and parties to simultaneously see and hear the party or the witness answering questions.

Records or Transcript. The University shall create an audio or audiovisual recording, or transcript, of the live hearing and make it available to the parties for inspection and review.

- **Cross-Examination.** At the live hearing, the decision-maker must 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 at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding the University's discretion to otherwise restrict the extent to which advisors may participate in the proceedings.

If a party or witness does not submit to cross-examination at the live hearing, the decision-maker must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker cannot 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.

- **Relevant Questions.** Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker must first 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

⁴ The decision-maker may not be the Title IX Coordinator or investigator. The decision-maker may also be a panel of decision-makers.

incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

- **Advisors for Cross-Examination.** If a party does not have an advisor present at the live hearing, the University shall provide without fee or charge to that party, an advisor of the University's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

The Title IX Coordinator will be responsible for coordinating the live hearing process. This includes, but is not limited to: scheduling the hearing; notifying parties and witnesses of the hearing; ensuring that the decision-maker is provided with appropriate materials including any exhibits; coordinating technology; securing a location for the hearing; and providing for a record or transcript. The Title IX Coordinator will also act as liaison between the parties and the decision-maker on procedural matters.

The parties will be given written notice of the date, time, and location of the hearing no sooner than seven (7) calendar days before the hearing has been scheduled. The notice of hearing shall also include the identity of the decision-maker. Any objections to an appointed decision-maker must be made in writing to the Title IX Coordinator within five (5) calendar days after notice has been provided. Objections must be based on actual bias or conflicts of interest. The Title IX Coordinator will determine if bias or a conflict of interest exists. In that event, the parties will be notified in writing of the name of the new decision-maker. The date for the hearing may also need to be rescheduled. Any objection to the new decision-maker will be made in accordance with this section.

No later than five (5) calendar days before the hearing, each party will provide to the decision-maker (i) the name of, and contact information for, the party's advisor (if any); (ii) any requests to consolidate pending cases for hearing; and (iii) a proposed witness list.⁵

The decision-maker will make all determinations regarding pre-hearing matters and will promptly notify the Title IX Coordinator who, in turn, will promptly notify the Parties.

Decision-Maker's Determination Regarding Responsibility

Following the live hearing, the decision maker shall issue a written determination regarding responsibility. To reach this determination, the preponderance of the evidence standard must be applied. The decision-maker's written determination shall:

- Identify the allegations potentially constituting sexual harassment;
- Describe the procedural steps from receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

⁵ The investigator may be a witness at hearing. However, the decision-maker must independently reach a determination regarding responsibility without giving deference to the investigative report.

- Include the findings of fact supporting the determination;
- Include the conclusions regarding the application of the University’s code of conduct to the facts;
- Include a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the University imposes on the respondent, and whether remedies designed to restore or preserve equal access to the University’s education program or activity will be provided by the University to the complainant; and
- Include the University’s procedures and permissible bases for the complainant and respondent to appeal.

The decision-maker shall provide his/her written determination to the parties simultaneously. The determination becomes final either on the date the University provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

Appeal

Any party can appeal the decision-maker’s determination regarding responsibility. Parties can appeal on the following bases:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or
- The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against complainant or respondent generally or against the individual complainant or respondent that affected the outcome of the matter.

Parties also have the right to appeal the University’s mandatory or discretionary dismissal decision.

Appeals must be filed with the Title IX Coordinator within five (5) calendar days following issuance of the decision-maker’s written determination. Upon receipt of the appeal, the Title IX Coordinator shall notify the parties in writing that an appeal has been filed. The Title IX Coordinator shall also appoint a reviewer to consider the appeal and notify the parties of the selected reviewer.⁶

If the parties have objections to the appointed reviewer based on actual bias or conflict of interest, they shall contact the Title IX Coordinator within five (5) calendar days after notice has been provided. The Title IX Coordinator will determine if bias or a conflict of interest exists. In that event, the parties will be notified in writing of the name of the new reviewer. Any objection to the new reviewer will be made in accordance with this section.

⁶ The reviewer shall not be the same person as the decision-maker, the investigator, or the Title IX Coordinator. The reviewer may also be a panel of reviewers.

The reviewer shall notify the parties of the appeal procedures and set a schedule for the parties to submit written statements in support of, or challenging, the outcome. Such schedule shall provide an opportunity for each party to respond to the arguments of the other party.

Upon reviewing both parties' statements, the reviewer shall issue a reasoned written decision describing the result of the appeal and rationale for the result. The written decision shall be provided to both parties simultaneously. The reviewer's decision shall be final and binding upon the parties.

Remedies

This grievance process provides remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent. The Title IX Coordinator is responsible for effective implementation of any remedies. Remedies under this policy for sexual harassment must be designed to restore or preserve equal access to the education program or activity. For students, the range of possible remedies includes but is not limited to: safety escorts, class section reassignment, residence hall room reassignments, counseling and academic support services, academic accommodations, the ability to retake a test, and withdrawal or re-enrollment in a course without financial penalty. For employees, the range of possible remedies includes but is not limited to; a "no contact" order between the parties, office reassignments, job reassignments, accommodations and/or counseling.

The grievance process may also provide for discipline or recommendations for discipline where a determination of responsibility for sexual harassment has been made against the respondent. For students, the range of possible discipline includes but is not limited to: a warning, probation, restitution, residence hall probation, residence hall suspension, residence hall expulsion, university probation, university suspension, and university expulsion. More than one of the sanctions listed above may be imposed for any single violation. For employees, the range of possible discipline includes but is not limited to: a written warning, suspension, and expulsion or termination. Recommendations for discipline will be pursued according to applicable University policies.

The University will also consider whether there are any broader student population remedies that should be considered to satisfy its Title IX obligation to eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.

Informal Resolution

At any time after a formal complaint has been filed (but before a determination regarding responsibility), the University may offer the parties the opportunity to engage in informal resolution of the formal complaint. However, informal resolution may not be offered or utilized where the allegations involve an employee sexually harassing a student.

The University must obtain the parties' voluntary, written consent to the informal resolution process. The Title IX Coordinator must also provide to the parties a written notice disclosing:

- The allegations;

- The requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations (provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint); and
- Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

At any time prior to agreeing to a resolution resulting from an informal resolution process, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint. The University will not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

SECTION 8. MISCELLANEOUS PROVISIONS REGARDING DISCRIMINATION ON THE BASIS OF SEX AND SEXUAL HARASSMENT

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 Educational Rights and Privacy Act (“FERPA”) and its regulations, or as required by law, or to carry out the purposes of 34 C.F.R. Part 106 (Nondiscrimination on the Basis of Sex in Education), including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

Retaliation

The University prohibits intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX or its regulations, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy, Title IX, or Title IX’s regulations.

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, constitutes retaliation.

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

Recordkeeping

The University will comply with all recordkeeping requirements imposed by applicable law and regulations, including those recordkeeping requirements set forth in 34 C.F.R. § 106.45(b)10. This includes the following records, which must be maintained in compliance with federal and state laws:

- Each sexual harassment investigation, including any determination regarding responsibility and any audio or audiovisual recording or transcript, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the education program or activity;
- Any appeal and the result of that appeal;
- Any informal resolution and the result of that informal resolution;
- All Title IX training materials; and
- Records of any actions, including any supportive measures (and the basis for providing or not providing supportive measures based on the deliberate indifference standard) taken in response to a report or formal complaint of sexual harassment.

Beginning on August 14, 2020, the above-cited records must be maintained for no less than seven (7) years from the conclusion of a matter (including any appeal).

Right to Pursue Other Remedies Not Impaired

The right of a person to prompt and equitable resolution of a complaint filed under this policy shall not be impaired by the person’s pursuit of other remedies, e.g., criminal complaints, civil actions, etc. Use of the University’s grievance procedures does not extend any filing deadline related to the pursuit of other remedies.

SECTION 9. RESOURCES

If you believe that you or another student or employee has been a victim of sexual harassment, the following resources are available to you and/or the other person. Outside of seeking confidential support with the Mount Mary University Counseling Center, these resources are not confidential and may trigger a response from the University.

| RESOURCES | CONTACT INFORMATION |
|--|---|
| Milwaukee Police Department, District 7 (Non-Emergencies) | 414-935-7272 |
| Milwaukee Police Department, District 7 (Emergencies) | 911 |
| Mount Mary University Public Safety | Bergstrom Hall, Lower Level 414-807-9560 414-930-3333 |

| | |
|--|---|
| <p>Confidential Support with Mount Mary University Counseling Center</p> | <p>You can find the Counseling Center in Haggerty Library, Student Success Center 414-930-3022</p> |
| <p>Filing an Anonymous Report</p> | <p><i>MyMountMary</i>, Sexual Misconduct and Harassment Anonymous Report Form</p> |
| <p>Filing a Report or Formal Complaint with the University's Title IX Coordinators</p> | <p>Keri Alioto Vice President for Student Affairs Caroline Hall 145 2900 Menomonee River Parkway Milwaukee, WI 53222 aliotok@mtmary.edu Phone: 414-930-3372</p> <p>April Forray Senior Director of Human Resources Notre Dame Hall 252 2900 Menomonee River Parkway Milwaukee, WI 53222 forraya@mtmary.edu Phone: (414) 930-3627</p> |
| <p>Healing Centers</p> | <p>24 hour telephone line: 414-219-5555 Confidential Text Line: 414-219-1551</p> <p>Aurora Healing Center 130 W. Bruce Street, 4th Floor Milwaukee, WI 53204 414-671-4325</p> <p>Aurora Healing Center at Aurora Sinai Medical Center 945 N. 12th Street Milwaukee, WI 53233 414-219-5938</p> <p>Aurora Healing Center at Sojourner Family Peace Center 619 W. Walnut Street Milwaukee, WI 53212 414-810-1498</p> |

| | |
|--|---|
| | <p>Aurora Healing Center at Aurora West Allis Medical Center 8901 W. Lincoln Ave. West Allis, WI 53227 414-219-5938</p> |
|--|---|